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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~316~~. 57

THE WESTERN UNION TELEGRAPH COMPANY, APPELLANT,

vs.

HENRY W. DAVENPORT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED NOVEMBER 23, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 316.

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1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and southern district of Ohio, begun and held at the court-house in the city of Cincinnati, on the first Tuesday of April, being the sixth day of that month, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth. Present, the honorable Philip B. Swing, one of the judges of said court.

Among the proceedings had were the following to wit:

HENRY W. DAVENPORT, BY HIS GUARDIAN Euretta E. Davenport, *vs.* THE WESTERN UNION TELEGRAPH COMPANY. } 1971. Chancery.

Be it remembered that heretofore, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and seventy-four, came the said defendant, by Collins & Heron, its solicitors, and filed in the clerk's office of the court aforesaid, a transcript
2 of the record and proceedings of the superior court of Cincinnati in said cause, clothed in the words and figures following, to wit:

Pleas at the city of Cincinnati, in the county of Hamilton, and State of Ohio, in the term of October, anno Domini one thousand eight hundred and seventy-four, of the superior court of Cincinnati, held by the honorable T. A. O'Connor, one of the judges of said court, in separate session, sitting in room number one in the court-house, in the city of Cincinnati, county and State aforesaid.

Petition.

HENRY W. DAVENPORT, A MINOR, BY EURETTA E. Davenport, his guardian, plaintiff, *against* THE WESTERN UNION TELEGRAPH COMPANY, defendant. } Equitable relief.

Be it remembered that heretofore, to wit, on the 11th day of August, A. D. 1874, came the above-named plaintiff, by Cox, Follet and Cochran, his attorneys, and filed in the office of the clerk of said court his
3 certain petition and praecipe, clothed in the words and figures following, to wit:

Petition and praecipe.

Superior court of Cincinnati.

THE STATE OF OHIO, *Hamilton County:*

HENRY W. DAVENPORT, A MINOR, BY EURETTA E. Davenport, his guardian, pl'ff, *vs.* THE WESTERN UNION TELEGRAPH COMPANY, def't. } Petition.

The said plaintiff, Henry W. Davenport, who is a minor, and who brings this action by his guardian, Euretta E. Davenport, for cause of

action against the defendant, The Western Union Telegraph Company, a corporation organized under and in pursuance of the laws of the State of New York, for cause of action says, that heretofore, to wit, in the month of May, 1871, he, the said plaintiff, was and still is the owner of three hundred and ninety shares of the capital stock of the defendant, The Western Union Telegraph Company, each share being of the par value of one hundred dollars, or the whole number of shares of the par value of thirty-nine thousand dollars. That the said plaintiff be-
4 came the owner of said shares of stock as one of the children and a legatee under the will of the late Charles Davenport, deceased.

That after the settlement of the estate of the said Charles Davenport, there remained for distribution in accordance with the provisions of his said last will and testament, eleven hundred and seventy shares of said capital stock of said defendant, of which the said plaintiff was entitled to and did receive three hundred and ninety shares. That, as this plaintiff is informed and believes, the number of the stock certificates for eleven hundred and fifty of said eleven hundred and seventy shares were as follows: Nos. 2610, 2611, 2612, 2613, 2614, 2615, and 2616, each for fifty shares. Nos. 3603, 3716, 3717, 3718, 3719, 3720, 3722, and 3723, each for one hundred shares, and there was one certificate for twenty shares, the number of which this plaintiff is unable to state.

That at the time of the settlement of said estate of Charles Davenport, deceased, the guardian of this plaintiff was and still is the
5 said Euretta E. Davenport. That this plaintiff is unable to state what particular 390 shares of said 1,170 shares of stock were transferred to the said plaintiff as his portion of the same, but this plaintiff is informed and believes that the 390 shares of said stock so transferred to him, were surrendered to the defendant and that a new certificate for the entire 390 shares was issued by said defendant to this plaintiff and in his name, but this plaintiff is unable to give the number of such certificate. That since the transfer to this plaintiff of said 390 shares of stock, this plaintiff has been the actual bona fide owner of the same, and has full right and title in law and equity to the same, and to stand as such owner upon the books of said defendant and to receive any and all dividends that have been or that may hereafter be declared upon said stock.

Yet the said defendant regardless of the rights of this plaintiff and in violation of its duties and obligations in this behalf, without any legal rights or authority whatever has, as this plaintiff is informed and believes, transferred said stock upon its books out of the
6 name of this plaintiff and placed the same in the name of some person or persons to this plaintiff unknown, and has since that time refused to recognize this plaintiff as the owner of said stock or to pay him or his said guardian the dividends declared and payable thereon.

That this plaintiff is informed and believes that said transfer of said stock upon the books of the defendant was made in pursuance of a pretended power of attorney authorizing such transfer, executed in the name of this plaintiff, but this plaintiff avers that he never executed himself, nor did he authorize any one else to execute such power of attorney; that being a minor the plaintiff had no legal capacity to execute such power of attorney, or to authorize its execution or the transfer of said stock, and if any such power of attorney was exhibited to the said defendant, the same was false, fraudulent and forged, and any transfer or pretended transfer of said stock out of the name of this plaintiff was

false and fraudulent and in no manner directly or indirectly authorized by this plaintiff.

7 The said plaintiff further says that after the transfer of said 390 shares of stock to him as aforesaid and the issuing of certificates thereof, the same was taken into the custody of his said guardian Euretta E. Davenport, and remained in her custody until some time about the first June, 1871. That the certificate of said shares of stock with other valuable papers of said Euretta E. Davenport, were kept by her in a tin box which was deposited by her in the Fourth National Bank, of Cincinnati, Ohio. That about the 1st June, 1871, the said Euretta E. Davenport being about to go to Europe, and expecting to be gone for a year or more, and thinking it might be necessary during her absence for some one to have access to said box entrusted the key to said box with one Robert W. Richey, but with no authority to said Richey or any one else to take or in any manner remove or dispose of said stock, or to do anything with the same. That since that time, neither the said plaintiff nor his said guardian has seen said certificate of stock, nor has this plaintiff or his said guardian any copy or

8 memorandum of said stock, and hence are unable to state with certainty whether there was one or more certificates of said stock or the number or numbers of the same, or whether said certificate or certificates of stock stood in the name of this plaintiff, or of his said guardian as such guardian, but plaintiff believes, from the best information he can obtain, that there was but one certificate and that in the name of this plaintiff.

Plaintiff further says, that a dividend was declared of two per cent. upon the capital stock of said defendant, payable on the fifteenth day of July, 1874, amounting in the aggregate upon the said 390 shares belonging to this plaintiff to the sum of seven hundred and eighty dollars to which this plaintiff is entitled but which the said defendant refuses to pay either to the said plaintiff or to his said guardian. That this plaintiff is not advised and therefore cannot state, whether any other dividends have been declared by said defendant since the month of May, 1871, or, if so, the amount of such defendant or dividends, and

9 when payable, but if any such dividend, or dividends have been declared, this plaintiff is entitled to the amount thereof upon said 390 shares of stock with interest from the time the same was payable, and this plaintiff is also entitled to have said three hundred and ninety shares of the capital stock of said defendant replaced in his name upon the books of said defendant, and also to a certificate for the same, and also to be restored to all that he has lost by reason of the false, fraudulent and forged transfer of said shares of stock.

The plaintiff also annexes to this petition certain interrogatories which he desires said defendant to answer.

The said plaintiff therefore prays the court by proper decree to ascertain the amount due this plaintiff from the said defendant as dividend upon the said three hundred and ninety shares of stock, and that the defendant may be ordered to pay the same a short time, to be fixed by the court, and in default thereof that execution may issue therefor. That the said defendant may also be ordered and directed to replace the said three hundred and ninety shares of stock in the name of

10 this plaintiff, and to issue to this plaintiff a certificate for the same within a short time to be fixed by the court, and in default thereof that the said defendant pay to this plaintiff the sum of thirty-nine thousand dollars, and that execution may be awarded therefor. That the said defendant may be required to answer the interrogatories

hereto attached, and that plaintiff may have such other and further relief as may be just and equitable.

COX,
FOLLET, and
COCHRAN,
Att'ys for Pl't'ff.

THE STATE OF OHIO,
Hamilton County, ss:

Euretta E. Davenport, being first duly sworn, says that she is the guardian of Henry W. Davenport, who is a minor, and that she believes the matters stated in the foregoing petition to be true.

EURETTA E. DAVENPORT.

Subscribed in my presence and sworn to before me this 11th day of August, A. D. 1874.

[SEAL.]

A. W. WATERS,
Notary Public Hamilton Co., Ohio.

Interrogatories annexed to the foregoing petition to be answered by the defendant in pursuance of section 105 of the code of civil procedure of the State of Ohio.

11 1st. In whose name did the certificates of stock numbered as follows: 2610, 2611, 2612, 2613, 2614, 2615, 2616, 3603, 3716, 3717, 3718, 3719, 3720, 3722, and 3723 stand upon the stock books of the Western Union Telegraph Company; have said certificates of stock, or any part of them, been transferred, and if so, to whom, or have they been surrendered and cancelled and new certificates issued in lieu thereof, and if so to whom were such new certificates issued, and what are the numbers of the same, and for what number of shares of stock was each of said new certificates issued?

2nd. Did not the said plaintiff Henry W. Davenport, in the month of May, 1871, appear upon the books of said Western Union Telegraph Company as the owner of three hundred and ninety shares of the stock of said company, and if so, what are the number or numbers of the certificate or certificates of such shares, and do they still stand in his name upon the books of said company?

12 3rd. If said plaintiff Henry W. Davenport did not appear upon the books of said company in the month of May, 1871, did not Euretta E. Davenport, as guardian of said Henry W. Davenport at the date aforesaid, appear upon the books of said company as the owner of three hundred and ninety shares of the stock of said company? And if so give the number or numbers of the certificate or certificates of such shares, and state whether they still stand in the name of such guardian as aforesaid upon the books of said company.

4th. Has said 390 shares of stock so standing in the name of Henry W. Davenport or of Euretta E. Davenport, as guardian of said Henry W. Davenport, been transferred upon the books of said company, and if so when and to whom was such transfer made, and by what authority, or pretended authority, was the same done?

5th. Have new certificates been issued for said 390 shares of stock, and if so, when and to whom?

6th. Has the defendant in its custody and possession the original certificate or certificates for said 390 shares of stock as the same were issued to the said plaintiff or his said guardian as aforesaid? If so

13 attach such certificate or certificates or copies of the same to your

answer to these interrogatories; if not, state, if you know, what has became of such certificate or certificates.

7th. Who is now recognized by the defendant as the owner and entitled to said 390 shares of stock, and in whose name does the same stand upon the books of said company?

8th. State what, if any, dividends have been declared upon the stock of said Western Union Telegraph Company since the month of May, 1871; the amount of any and all such dividends, and when payable.

COX, FOLLETT AND COCHRAN,
Att'ys for Pl'ff.

On the back of the foregoing petition is endorsed the following, to wit, "Issue summons for def't to sheriff of Hamilton County, Ohio, endorsed 'suit brought for equitable relief.' Cox, Follett and Cochran, att'ys for pl'ff."

And on the same day, to wit, on the 11th day of August, A. D. 1874, there issued out of the office of the clerk of said court a certain
14 summons directed to the sheriff of Hamilton County, Ohio, clothed in the words and figures following, to wit:

Summons.

The superior court of Cincinnati.

THE STATE OF OHIO,
Hamilton County, City of Cincinnati:

To the sheriff of the county of Hamilton:

You are commanded to notify the Western Union Telegraph Company, a corporation, defendant, that it has been sued by Henry W. Davenport, by his guardian, Euretta E. Davenport, plaintiff, in the superior court of Cincinnati, and that unless it answer by the 12th day of September, A. D. 1874, the petition of the said plaintiff against it filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 24th day of August, A. D. 1874.

Witness my hand and the seal of the said court at Cincinnati, this 11th day of August, A. D. 1874.

[SEAL.]

W. M. TREVOR,
Clerk of the Superior Court of Cincinnati,
By EMIL HOFFMAN,
Deputy.

15 On the back of the foregoing summons is endorsed the following, to wit, "Summons in action for equitable relief. To 24th day of August, 1874. Cox, Follett and Cochran, att'ys."

And afterwards, to wit, on the twenty-fourth day of August, 1874, came the said sheriff of Hamilton County, Ohio, and duly returned the foregoing summons with his return thereon, endorsed as follows, to wit:

Returned.

AUGUST 21ST, 1874.

Served the within-named, The Western Union Telegraph Company,

by delivering a true copy personally to F. A. Armstrong, manager of said company, no other chief officer being found.

GEO. W. ZIEGLER, *Sheriff*,
By GEO. W. GUYSI, *Deputy*.

And afterwards, to wit, on the twelfth day of September, A. D. 1874, there was filed in the office of the clerk of said court a certain petition for removal to U. S. circuit court, clothed in the words and figures following, to wit:

Petition for removal.

THE STATE OF OHIO,
Hamilton County, ss:

Superior court of Cincinnati.

HENRY W. DAVENPORT, A MINOR, BY
16 Euretta E. Davenport, his guardian,
pl'ff,
vs.
THE WESTERN UNION TELEGRAPH COMPANY,
def't.

To the superior court of Cincinnati:

The petition of the Western Union Telegraph Company respectfully shows that a suit has been commenced in this court by Henry W. Davenport, a minor, by Euretta E. Davenport, his guardian, as plaintiff, against your petitioner as defendant.

That said suit was commenced on or about the 11th day of August, 1874, and is now pending in this court, which is within the southern district of Ohio and the sixth circuit, and that no trial nor final hearing has been had in said cause.

That said plaintiff, Henry W. Davenport, and his said guardian, Euretta E. Davenport, are and were at the time of the commencement of said suit citizens of the State of Ohio, and your petitioner is and was at the time of the commencement of said suit a corporation organized and existing under the laws of the State of New York, namely
17 under an act of the legislature of said State, entitled "An act to provide for the incorporation and regulation of telegraph companies," passed April 12th, 1848, and the several acts of said legislature additional thereto and amendatory thereof, and having its principal place of business in the city of New York in said State, and is and was at the time of the commencement of said suit a citizen of the State of New York.

That said suit is brought to compel your petitioner to replace in the name of said plaintiff three hundred and ninety shares of the capital stock of your petitioner alleged to have been transferred in the books of your petitioner without authority, or in default thereof to pay to said plaintiff the sum of thirty-nine thousand dollars, and also to ascertain the amount of certain dividends on said stock alleged to be due to the *to the* plaintiff and to amount to at least the sum of seven hundred and eighty dollars, and to compel the payment of said amount to the plaintiff by your petitioner.

That your petitioner denies and will contest the right of the
18 plaintiff to any portion of the relief claimed in said suit, and that

the matter in dispute therein exceeds the sum or value of five hundred dollars exclusive of costs.

Your petitioner desires that said suit may be removed for trial from this court into the next circuit court of the United States to be held in the district where the said suit is pending, to wit, into the next circuit court of the United States for the southern district of Ohio, pursuant to the provisions of the statute of the United States in such case made and provided; and your petitioner is ready to give, and hereby offers to give, good and sufficient surety for entering in said circuit court on the first day of its session copies of the process *it* in said suit, and of all pleadings, depositions, testimony, and other proceedings in the cause, and also for its there appearing and entering special bail was originally requisite therein.

Your petitioner therefore prays that said suit may be removed from this court into said circuit court of the United States for the
19 southern district of Ohio; that this court do accept the surety aforesaid and herewith filed, and proceed no further in this suit, and that your petitioner may have such other and further relief and order as may be just.

{ WESTERN UNION TELEGRAPH CO. SEAL. } THE WESTERN UNION TELEGRAPH COMPANY,
By WILLIAM ORTON,
President.

STATE OF NEW YORK,
City and County of New York, ss:

William Orton, being duly sworn, says that the Western Union Telegraph Company, the petitioner in the foregoing petition, is a corporation, and that he is president thereof; that the foregoing petition is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Deponent further says that he is the same person who subscribed to the foregoing petition the name of the Western Union Telegraph Company, and his own name as president of said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing petition is such corporate seal, and was so affixed by him by
20 authority of such corporation, and that by the same authority he subscribed to said petition the name of said corporation and his own name as president thereof.

WILLIAM ORTON.

Subscribed and sworn to before me this tenth day of September, 1874. Witness my hand and official seal.

[SEAL.] WILLIAM H. CLARKSON,
Commissioner for Ohio in New York City,
117 *Broadway, New York City.*

And on the same day, to wit, the 12th day of September, A. D. 1874 there was filed in the office of the clerk of said court a certain bond, clothed in the words and figures following, to wit:

Bond.

Know all men by these presents that we, George T. Williams, F. A. Armstrong, are held and firmly bound unto Henry W. D. Davenport, of Cincinnati, in the State of Ohio, in the sum of one thousand dollars lawful money of the United States of America, to be paid to the said

Henry W. Davenport, his executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves,
21 and each of us, the heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the 12th day of September, one thousand eight hundred and seventy-four.

Whereas, on or about the eleventh day of August, 1874, a suit was brought in the superior court of Cincinnati, in the State of Ohio, Hamilton County, by the said Henry W. Davenport, a minor, by Euretta E. Davenport, his guardian, as plaintiff, against the Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, as defendant, and the same is now pending in said court, which is within the southern district of Ohio, and the sixth circuit, and no trial or final hearing has been had in said cause, and the said plaintiff, Henry W. Davenport, and his said guardian, Euretta E. Davenport, are, and at the time of the commencement of said suit were, citizens of the State of Ohio, and the said defendant, The Western Union Telegraph Company, is, and at the time of the commencement of said suit was, a citizen of the State of New
22 York, and the matter in dispute in said suit exceeds the sum or value of five hundred dollars exclusive of costs; and whereas the said The Western Union Telegraph Company is about to file its petition for the removal of said cause for trial into the circuit court of the United States for the southern district of Ohio, pursuant to the provisions of the statute of the United States in such case made and provided:

Now the condition of this obligation is such that if the said The Western Union Telegraph Company shall enter in the circuit court of the United States for the southern district of Ohio, next to be holden in said district on the first day of its session, copies of the process against it in said suit, and of all pleadings, depositions, testimony, and other proceedings in the cause, and also shall there appear and enter special bail in said cause if special bail was originally requisite therein, then the above obligation to be void, otherwise to remain in full force and virtue.

GEO. T. WILLIAMS. [SEAL.]
F. H. ARMSTRONG. [SEAL.]

Sealed and delivered in the presence of—
F. M. CALKINS.
DANIEL HENDERSON.

23 STATE OF OHIO,
Hamilton County, ss:

George T. Williams and Frank H. Armstrong being severally duly sworn, each for himself, says that he is one of the subscribers to the foregoing undertaking; that he is a resident and freeholder within this State; and is worth the sum of two thousand dollars and more, over and above all his debts and liabilities, and exclusive of property exempt from execution.

Sworn to before me this 12th day of September. 1874.
[SEAL.] DANIEL HENDERSON,
Notary Public, Ham. Co., Ohio.

STATE OF OHIO,
Hamilton County, ss:

On this 12th day of September, 1874, before me personally appeared George T. Williams and Frank A. Armstrong, to me known to be respectively the persons described in and who executed the foregoing undertaking, and severally acknowledged that they executed the same as their voluntary act and deed.

24 Witness my hand and official seal at Cincinnati, this 12th Sept., A. D. 1874.

[SEAL.] DANIEL HENDERSON,
Notary Public, Ham. Co., Ohio.

Default for answer.

And on the same day, to wit, the 12th day of September, A. D. 1874, the said defendant having been duly served with process herein and having failed to answer or demur to the petition herein filed against it within the time prescribed by law, default for answer was entered against it by the clerk of said court in accordance with the rules and regulations thereof.

And afterwards, to wit, on the 6th day of October, in the term of October, A. D. 1874, of said court, the following entry was made on the journal thereof, to wit:

Cause removed.

HENRY W. DAVENPORT
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } Min. 27. 30993.

On petition of the defendant for the removal of this cause to the circuit court of the United States for the southern district of
25 Ohio, and proof being made that said defendant is a corporation organized under the laws of the State of New York, and not a citizen of the State of Ohio, and said defendant offering good and sufficient security for the filing in such court on the first day of its session, copies of the process and other proceedings in this cause, and for its appearance in said court, it is now ordered that this cause proceed no further in this court, and that the same be transferred to said circuit court of the United States.

THE STATE OF OHIO,
Hamilton County, City of Cincinnati, ss:

I, W. M. Trevor, clerk of the superior court of Cincinnati, do hereby certify that the foregoing is a full and correct transcript of the proceedings had and entered in the case of Henry W. Davenport, a minor, by Euretta E. Davenport, his guardian, against the Western Union Telegraph Company, No. 30993, as the same appear from the files and
26 journals of said court now in my office.

Witness my hand and the seal of said court at Cincinnati this 22nd day of October, A. D. 1874.

[SEAL.] W. M. TREVOR,
Clerk Superior Court of Cincinnati, Ohio,
By EMIL HOFFMAN,
Deputy.

And afterwards, to wit, on the twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-four, came the said defendant, by its attorneys, Collins and Heron, and, by leave of court first had and obtained, filed in the clerk's office of said court its answer herein, which said answer is in the words and figures following, to wit:

Answer.

Circuit court of the United States, southern district of Ohio.

HENRY W. DAVENPORT, BY HIS GUARDIAN, }
vs.
THE WESTERN UNION TELEGRAPH COMPANY. }

Answer.

Said defendant, for answer to the bill of complaint of plaintiff,
27 says that in the month of February, one thousand eight hundred and seventy-one, there were three hundred and ninety shares of the capital stock of the Western Union Telegraph Company standing in the name of Henry W. Davenport, each of said shares being of the par value of one hundred dollars, but defendant has no knowledge whether plaintiff is the identical person who owned said shares, or that plaintiff is or then was a minor, and therefore denies the same.

Defendant has no knowledge relating to the settlement of the estate of said Charles Davenport, but admits that his executors, claiming to act under his will, caused said three hundred and ninety shares of stock to be transferred to his son, Henry W. Davenport, on or about the twenty-third day of February, one thousand eight hundred and seventy-one, and on that day a new certificate for said shares, No. 15362, was issued by the said company for said Henry W. Davenport.

Defendant denies that said plaintiff ever since that time has been and still is the owner of said 390 shares, or entitled to the dividend thereon.

28 Defendant admits that on or about the 23rd of February, 1871, said stock was transferred on the books of said company out of the name of said Henry, but denies that said transfer was made without any legal authority or right, and avers that said transfer was made by proper authority.

Defendant denies that the power of attorney by virtue of which said transfer was made was false, fraudulent, or forged.

Defendant has no knowledge in relation to the manner in which the certificate for said shares was kept while the same belonged to said Henry, and therefore denies the allegations of the bill of complaint relating thereto.

Defendant denies that plaintiff was entitled to said dividend of two per cent. made on the day of July, 1874, or that he is entitled to have said stock replaced in his name on the books of the company.

Wherefore defendant asks to be hence dismissed with its costs.

COLLINS & HERON, *Att'ys.*

29 STATE OF NEW YORK,
County of New York, ss:

Norvin Green, vice-president of said Western Union Telegraph Com-

pany, being duly sworn, says he believes the statement of the foregoing answer are true.

NORVIN GREEN.

Sworn to before me and subscribed in my presence this 7th day of December, 1874.

[SEAL.]

R. D. ROCHESTER,
Notary Public, N. Y. Co. (84.)

Answer to interrogatories.

1. To the first interrogatory defendant answers that the certificates numbered as in said question, were issued to Charles Davenport. They have been surrendered and new certificates issued to the widow and children of said Charles for 390 shares each.

2. To the second interrogatory defendant answers: Henry H. Davenport was the owner of 390 shares in the books of said company in
30 February, 1871, and the No. of the certificate was 15302.

3. The third interrogatory is already answered.

4. Said 390 shares standing in name of said Henry were transferred on the books, viz: To Soutter & Co., three hundred and sixty, and to William Heath & Co., thirty shares by the authority of a power of attorney signed by Henry Wade Davenport, and the signature duly witnessed by the brother of his guardian and mother, R. W. Richey.

5. New certificates were issued for said shares to Soutter & Co., and Heath & Co., at the time of said transfer.

6. Defendant has the original certificate in its possession for said 390 shares, and a copy is hereto attached as requested.

7. Said stock has since been transferred to other parties, and defendant has not yet been able to trace same to present owners.

8. Only two dividends have been declared on such stock since May, 1871, namely, in July and October, 1874, of two per cent. each.

31 STATE OF NEW YORK,
County of New York:

Norvin Green being duly sworn, says he is the vice-president of said Western Union Telegraph Company, and that the foregoing answers to plaintiff's interrogatories are true according to the best of his knowledge, information, and belief.

NORVIN GREEN.

Sworn to before me and subscribed in my presence this 7th December, 1874.

[SEAL.]

R. H. ROCHESTER,
Notary Public, N. Y. Co. (84.)

COPY OF CERTIFICATE.

Shares $100 each.

The Western Union Telegraph Company. Certificate No. 15362. Shares 390.

Henry Wade Davenport is entitled to three hundred and ninety (390) shares, one hundred dollars each, of the capital stock of the Western Union Telegraph Company, transferable in person or by at-
32 torney on the books of the company only on the surrender and cancellation of this certificate by an endorsement thereof hereon

and in the form and manner which may at the time be required by the transfer regulations of the company.

In witness whereof the president and secretary of the said company have hereunto subscribed their names at the city of New York, this 13th day of May, 1867.

WILLIAM SIBLEY,
V. President.

O. H. PALMER,
Secretary.

Complainant's testimony.

Deposition of sundry witnesses taken before me, J. M. Dowson, a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the plaintiff, in an action pending in the United States circuit court, southern
33 district of Ohio, in which Henry W. Davenport, who sues by his guardian, Euretta E. Davenport, is plaintiff. and the Western Union Telegraph Company is defendant. John F. Follett being present on behalf of plaintiff; and Isaac C. Collins, esquire, on behalf of defendant.

EURETTA E. DAVENPORT, of lawful age, being by me first duly sworn, deposes and says as follows:

1. Question by the plaintiff. State your name and residence, and your relationship to said plaintiff, Henry W. Davenport?

Ans. Name is Euretta W. Davenport, residence Cincinnati; I am the mother of Henry W. Davenport.

2. State whether or not you are the widow of Charles Davenport, deceased; when said Charles Davenport died, what children he left surviving him, their names and ages?

34 Ans. I am the widow of Charles Davenport. He died March 14, 1865. He left two children, Henry Wade Davenport and Katharine Josephine Davenport. Henry will be twenty-one the 25th April, 1875; Catharine was eighteen the 3d November, 1874.

3. Question. State whether or not Charles Davenport left a will, and if so, who were the executors of said will?

Ans. He did leave a will. J. H. Wade, of Cleveland, and Frederic Westmore, of Detroit, were the executors of said will.

4. Question. After the settlement of the estate of said Charles Davenport, what property, if any, was distributed under the provisions of said will. State as near as you can the character and amount of such property?

Ans. There were eleven hundred and seventy shares of Western Union Telegraph stock, in three certificates of three hundred and ninety shares each, one to Henry Wade of three hundred and ninety
35 shares, and one to Catharine of three hundred and ninety shares, and the other three hundred and ninety to myself.

5. Question. Who, if any one, was appointed guardian to your two children, Henry Wade and Catharine Josephine, during their minority, and state whether or not there has been any change in such guardianship?

Ans. I was appointed guardian, and there has been no change.

6. Question. State to whom the three certificates of stock of which

you have spoken were delivered by said executors of the will of Charles Davenport?

Ans. They were delivered to me.

7. Question. Look at the two certificates of stock now shown you, purporting to be for three hundred and ninety shares each of Western Union Telegraph Company stock, one issued to Henry Wade Davenport, and numbered 15362, the other to Katharine Josephine
36 Davenport for three hundred and ninety shares of said Western Telegraph stock and is numbered 15363, and state whether or not they are two of the certificates of stock turned over to you by said executors as you have heretofore stated?

Ans. They are the two certificates, certified copies of said certificates are hereto attached, marked exhibits A and B, J. M. Dowson, notary public.

8. Question. Look at the two receipts now exhibited to you, purporting to be receipts signed by yourself as guardian for your said children respectively, and state whether or not they are the receipts given by you to said executors for said certificates of stock?

(Question objected to by counsel for defendant.)

Ans. They are the same.

(Copies of said receipts are hereto attached, marked exhibits C and D, J. M. Dowson, notary public).

9. Question. State what was done by you with said certificates of stock numbered 15362 and 15363, when you received the same
37 from said executors, where they were kept, and all you know with reference to the same?

Ans. When I received the certificates they were put in a tin box and put in the safe of the Fourth National Bank, and kept there.

10. Question. State whether or not said certificates of stock were ever removed from said tin box by your authority or consent, and when you first learned that they had been taken out of said box.

(Objection to first part of question as leading by counsel for defendant.)

Ans. They never were taken from the box with my knowledge or consent. I first learned about the first of April, 1873, that they had been taken on the last of March.

11. Question. When did you last see such certificates of stock previous to the last of March or first of April, 1873, and where were they at that time?

Ans. I don't remember the date of the time when I saw them, but when I saw them they were in the box.

38 12. Question. Where was said box kept during the year 1871, and state whether or not any one had access to said box except yourself?

Ans. The box was kept in the safe of the 4th National Bank during the year 1871, no one having access to the box except Robert Richey, and he had access to the box to take the coupons from the bonds during my absence from the city.

13. Question. What bonds do you refer to in your answer to the last question?

Ans. Government bonds.

14. Question. Where were you during the year 1871, and where were your children, Henry and Katharine?

Ans. I was at Put in Bay during the summer, with Katharine. Henry was in Europe. He sailed on the 1st July, 1870. I made a mistake in the year. I sailed for Europe on the first day of July, 1871. Previous

to my sailing I was on Walnut Hills to the first of June. The
39 first two weeks of June I was in the city, in Cincinnati. I went from there to Cleveland, and from there to New York. Katharine was with me all the time. Henry was in Europe. It was in the year 1870 that I was at Put in Bay.

15. Question. Look again at the certificate' of stock numbered 15362 and 15363, copies of which are hereto attached, marked Exhibits A and B, and state whether or not you have any knowledge of the pretended assignment of said certificates of stock, and all you know about the same.

Ans. I do not know anything about the assignment of said stock. I knew nothing about it.

[The latter part of March or first of April, 1873, while I was in Europe, I was written to and told that the stock was not in the box and could not be found. I wrote immediately to Robert, asking him if it were true that he had sold my children's stock. He replied, saying that he had sold it.] I came directly home and found the box empty.

(So much of the answer objected to for incompetency as included in brackets.)

40 16. Question. Please examine the signatures, Henry Wade Davenport to the pretended assignment on said certificate number 15362 and Katharine Josephine Davenport to the pretended assignment on said certificate number 15363, and state whether or not they are the genuine signatures of your said children, Henry and Katharinee, or if you know by whom said signatures were written.

Ans. They were not written by my children, or either of them. They were not signed by either of my said children. I do not know who signed them, not being an adept.

17. Question. Were the said certificates transferred, or the pretended signatures of your said children placed upon said certificates of stock, or either of them, with your knowledge or consent or under your directions?

(Objected to as leading by defendant.)

Ans. They were not.

41 18. Question. Had anything ever been said to you by any one in relation to selling or disposing of said stock previous to the respective dates of said pretended transfers?

(Question objected to as leading by defendant.)

Ans. Never in the world; never such a thought entered my mind as selling my children's stock.

19. Question. State whether or not you ever received either in your individual capacity or as guardian of your said children any portion of the proceeds of the sale of said stock.

(Objected to as leading by defendant.)

Ans. I never did; not one cent.

20. Question. Where was the tin box of which you have spoken on your return from Europe, in 1873, as you have stated.

Ans. It was in the safe of the Fourth National Bank.

42 21. Question. Look at the word Katharine in the pretended signature Katharine Josephine Davenport to the transfer on certificate number 15363 and state whether or not it is spelled in the way your daughter Katharine spells her name; and, if not, state the difference.

Ans. The name is spelled with an "e" on the transfer and she spells it with an "a." It is spelled Katherine on the transfer and she spells it Katharine.

Cross-examination by J. C. Collins, esq.:

1. Question. What bond, if any, did you give as guardian for your two children; and, if none, why not?

Ans. I gave none. It was not required of me. It being so expressed in the will of my husband.

2. Question. What other property of value did your husband leave besides his shares in the Western Union Telegraph Company?

43 Ans. That was all he left to the children, three hundred and and ninety shares of stock apiece.

3. Question. Did he leave any other valuable property except the telegraph stock and the residence or homestead at Avondale?

Ans. Not to the children.

4. Question. Was he the owner of any other real estate that you know of at the time of his death beside the homestead at Avondale?

Ans. He was not.

5. Question. The account filed with the executors seems to show that there was no other personal property left by him except household furniture and articles of personal are given to you, and the telegraph stock you have referred to. Have you any knowledge of any other?

44 Ans. Nothing more that I remember. There was a note of five thousand dollars made by R. W. Richey. There was more telegraph stock that was sold to pay debts.

5. Question. Please to state whether that note of R. W. Richey's was ever paid by him either to the executors or to yourself.

Ans. It never was paid, not even the interest.

6. Question. Look again at Exhibit C and D and state in whose handwriting is the body of those receipts and in whose hand the words "guardian," following your signature?

Ans. The words "guardian," &c., after my name are in my hand.

7. Question. The estate was considered fully settled at the date of those receipts, May first 1867, was it not?

Ans. I think it was.

8. Question. The homestead at Avondale was given to you

45 personally by the will, and you sold the same afterwards to Mr. James Glenn for forty thousand dollars, I think. Is that correct?

Ans. That is. It was within less than a year after my husband's death.

9. Question. Who were your advisors in the sale of that property and its investment?

Ans. My husband advised me to sell it before his death, and I invested it to suit myself.

10. Question. How long was it after your husband's death before you received your share of one-third of the telegraph stock to which you have referred?

Ans. I suppose it was about May first, 1867. The receipt now before me shows the correct date.

(Certified copy of the same is annexed, marked "E.")

11. Question. Was M'r J. H. Wade, of Cleveland, advising you at any time as to the sale of the real estate or the sale of the telegraph stock?

46 Ans. He thought that I had better sell the real estate and keep the stock. If either had to be sold, to sell the real estate and hold on to the stock.

12. Question. Were your three hundred and ninety shares all evidenced by one certificate or made up by several certificates?

Ans. I think mine was not. I do not remember about it. I am sure my children's were. I am not so sure of my own.

13. Question. Did you buy and sell telegraph stock on speculation after you got your share from the executors?

Ans. I think I never sold any of the stock of three hundred and ninety shares. I bought stock when I sold my house. I do not remember how many shares. I do not know how long after that. I had some Russian extension stock. I do not know how many shares. I sold it to M'r Keys. After that I do not remember having sold any stock except once, and then I bought the stock in again for less than I had
47 sold it. That left me with four hundred shares, which I left.

14 Question. You afterwards sold the four hundred shares in your name? State as nearly as you can when you sold it.

Ans. It was all sold at one time. Robert told me that stock was going down, and that I had better sell it that day and then buy it in at a lower rate, and make a little on it. I objected at first, but was prevailed upon to sell it, and never heard of the money or stock afterwards. I think it was sixty-nine or seventy (1869 or 1870.) I do not remember the season.

15. Question. By Robert in the above answer you mean your brother, R. W. Richey, I suppose?

Ans. Yes, sir.

16. Question. Do you recollect at about what price those four hundred shares sold?

48 Ans. He told me it was thirty-three. I mean Robert told me so.

17. Question. Was it about that time when you sold yours or earlier that you first heard that J. W. Wade, of Cleveland, had sold a considerable part of his stock, if not the whole?

Ans. I never heard that J. W. Wade had sold his stock until last summer.

18. Question. Who managed your financial matters for you in 1869, 1870, and 1871?

Ans. All the managing that was done I managed myself. There was not much to manage.

19. Question. Was not your money deposited in bank to the credit of R. W. Rickey?

Ans. It was not to my knowledge.

20. Question. Were the proceeds of the sale of your four hundred shares deposited in bank to your credit?

49 Ans. It was not.

21. Question. In what way, then, did you get the proceeds of the sale?

Ans. I did not get the proceeds of the sale at all. I came in and asked Robert about the stock, and he said it was all gone.

22. Question. Did you sell your Weste'n Union stock the day that Robert advised you to do so?

Ans. It was sold that day, I think. I do not know whether it was sold that day. I signed the certificate that day.

23. Question. Where were you when you signed the certificate and who witnessed the signature?

Ans. I was in the Fourth National Bank. Nobody witnessed it unless it was Robert.

24. Question. Did Robert get out the tin box or did you get that yourself?

50 Ans. I don't remember about it. I know the box was there, but I don't know who opened the box.

25. Question. Had you duplicate keys to the box?

Ans. No; not that I know of. I never saw but one key.

26. Question. Were any of Robert's papers or securities kept in the same box?

Ans. They were not.

27. Question. Were your government bonds which you have spoken of in that tin box the last time you saw it before you left for Europe?

Ans. The last time I saw the box I did not have it open. I do not remember when I did see the government bonds last.

28. Question. When did you last see the certificates of your children's stock in that box?

51 Ans. I think the last time I saw them was when I got my own stock. They were kept in an envelope in the box with mine. The envelope was there. I did not take the stock out. I think surely it was there.

29. Question. Was that the last time that you remember looking into the box?

Ans. I looked into the box. I think I had it out to put papers. I did not look at the contents of the box. I supposed everything was right, and I did not examine it.

30. Question. Did you keep the key of that box from the time when you sold your telegraph stock to the time when you left for Europe?

Ans. I had the key part of the time and Robert had it part of the time. When it was necessary for him to attend to the coupons and I was out of the city, he had it. When I went away he had the key. The day before I left the city for Europe I sent for the box to be brought

52 to me. Robert came with it, carried it over to me, and said that it would be very foolish for me to carry so valuable a box, and to leave it in the safe of the Fourth National Bank. He carried it back.

31. Question. You supposed the government bonds were then in it?

Ans. I did. I supposed they were all there.

32. Question. When the government bonds were sold, did you get the proceeds or were they deposited in the bank to your credit?

Ans. I don't know anything about that. I never knew they were sold.

33. Question. You did not find them in the box on your return, I believe, and have never seen them since, have you?

Ans. No; I found the box empty on my return. There were papers in the box, but the securities were gone. I have not seen them since.

53 34. Question. Did not your brother Robert attend to your financial matters for more than a year before you went to Europe, and also while you were absent?

Ans. As I said before, there was very little to attend to. I never authorized him to do anything while I was gone. He was in the bank before I went away, and when I wanted money I went there to get it. My deposits were there. A day or two before I went away he asked me to give him the power of attorney, saying that he might have to sell bonds. I declined. He said that it would be well to leave him the power of attorney, and that I refused to do.

35. Question. Were your deposits in your own name in the bank before you went away, or in the name of R. W. Rickey?

Ans. As far as I know about they were. I always drew checks on the bank when I wanted money.

36. Question. Did your account at the Fourth National continue after you went away to Europe?

54 Ans. It did.

37. Question. While you were in Europe did you draw checks directly on your bank; and if so, did you send them to R. W. Rickey, or did you negotiate or transfer them to third parties in Europe?

Ans. I had nothing to do about the checks. I had circular notes which I took with me. All the money I had there was in that form. When I wanted money, all I had to do was to put my name on the circular notes. They were of different amounts, varying from ten to fifty dollars.

38. Question. Did you buy and pay for all the circular notes you used while you were abroad before you left, or were you to receive a new supply from time to time?

Ans. I did not. I was to receive them as I wanted them.

39. Question. And when you wanted a new supply did you
55 write to R. W. Rickey to procure and forward them, or how did you manage about that?

Ans. I wrote to Duncan, Sherman & Co., of New York, to send them.

40. Question. And did you furnish money to Duncan, Sherman & Co. from time to time to pay for such circular notes; if not, how were they paid?

Ans. It was furnished up to the last one. The last one is unpaid for yet.

41. Question. Who did you suppose furnished the money to Duncan & Co. for these circular notes?

Ans. I supposed that it came from money that belonged to me. I did not suppose that my children's stock had been sold to furnish it. I did not suppose it could be.

42. Did you not suppose that R. W. Rickey was furnishing means to Duncan, S. & Co. for that purpose either out of his own funds or yours?

56, 57 Ans. I did not suppose that he was furnishing them out of his, for I did not know that he had anything. I always considered him very poor.

43. Question. Were you in Europe in July, 1871, to May, 1873? Were your children, Henry and Katharine, with you in Europe during all that time?

Ans. They were. Henry was at school, but I saw him every day. Katharine was with me all the time; most of the time in Vevay, in Switzerland.

44. Question. Did you keep an account with them as guardian during that time, so that you are able to state what their expenses were?

Ans. I never did, neither before nor after I went to Europe.

45. Question. Were they away at school before you went to Europe, or were they living with you all the time?

Ans. Henry was in Gambier one year—1867. The rest of the
58 time, up to 1870, he was with me. In 1870 he was in Europe at school before I went. Katharine has always been with me.

46. Question. When you kept a bank-account before you went to Europe, did you keep a blank-check book, from which you cut checks as you wanted them?

Ans. I did not; I just used loose checks. I got them out of a package.

47. Did you have a pass-book with the bank, in which your deposits were credited up to you, or any means by which you could know at a particular time what balance, if any, you had in bank?

Ans. I did. I had a pass-book, and when I drew a check I put down the amount.

48. Question. How long before you left for Europe did you cease drawing checks?

Ans. Shortly before. I do not know but that I drew one in Cleveland for a small amount.

59 49. Question. Will you please to produce your pass book, that we may see whether the proceeds of the bonds & stock are not credited to you?

(The book asked for in question No. 49 was produced; a certified copy of debit and credit sides is hereby attached, marked "Exhibit K." The first item on the credit side is under date July 5th, 1871. The first item on debit side is under date of May 29th, 1871.)

WITNESS. I did not see the book until my return in 1873. The pass-book that I had with the bank before I left for Europe I did not take with me. I did not leave it with anybody. It seems to me that Robert must have kept it.

a 49. Question. I see by the book he appears to have charged you, under date of July 1st, gold for expenses, $50.31; carriage to steamer, $5.00. Was he in New York when you sailed, and did he accompany you to the steamer?

Ans. He did; and remained with me until he was ordered off the steamer.

b 49. Question. If you had any conversation with him at that time about business, please relate what it was.

60 Ans. I had. Just after going on the steamer he told me to be perfectly contented; that he would watch over and take care of everything for me in the bank. That was all there was for him to do.

c 49. Question. Examine the note of R. W. Richey, now present, and see if eight hundred and fifty dollars in two payments are not endorsed as paid on account of principal, the second one being for five hundred dollars, of date May 12th, 1865.

Ans. It is.

d 49. Question. Did you receive frequent letters from your brother Robert, during the time you were in Europe, relating to business, and were you writing to him in regard to business frequently?

Ans. I think I received but three or four letters during the two years. The first letter he said that everything was going on smoothly and nicely, and the next letter was to tell me that my house was vacant, and then I do not remember anything until the last letter, in

61 which he told me that he had sold my children's stock. In every letter he urged me to stay there. That is all I remember about letters. No, I did not write him often; I do not remember how often.

e 49. Question. Have you kept the letters you received from him; or, if not all, have you kept the one referred to as the last one written by him?

Ans. I don't know whether I have that letter or not. I have a habit of burning letters, but I may have kept that one.

f 49. Question. Will you please examine the papers, and if you find the last-mentioned letters, furnish the same to the notary, that he may

copy so much thereof as relates to business, and if you retained a copy of your letter to him, please supply the same also.

(Copy, if found, will be annexed as an exhibit marked "L.—J. M. D., Notary Public." Letter not found or furnished.—J. M. D., N. P.)

62 *g* 49. Question. You say that the signatures to the transfers of your children's stock are not in the handwriting of your children. Have you had any experience in the judging of handwriting, so as to be an expert?

Ans. They are not. I have not had any experience.

h 49. Question. Examine them again, and say if you think they have any resemblance to their handwriting?

Ans. Not the remotest.

i 49. Question. Would you judge from looking at them that the party making those signatures was attempting to imitate the handwriting of Henry and Katharine?

Ans. I should say not, for there is not a letter in the name made as they made them, so far as I can see.

j 49. Question. Does the handwriting resemble the hand of R. W. Rickey?

63 Ans. Very much more than it does my children's.

k 49. Question. Do you recognize the handwriting of R. W. Rickey as witness?

Ans. I do.

l 49. Question. Are you of the opinion that people always make their letters the same way when they write?

Ans. All persons do not. I don't for one.

m 49. Question. Can you produce signatures of your daughter Katharine one year ago or more, that will show that she was not in the habit of spelling her name with an "e" in the second syllable, and that her genuine signature bears no resemblance to the one in question—transferring her stock?

Ans. I think I can; I shall try.

n 49. Question. Is it your opinion, on inspection of the signatures of Henry and Katharine to the transfers in question, that they were both written by the same hand; and, if so, what reason can you give

63 for so thinking?

Ans. I should say they were written by the same hand. The "D" in both are alike, and some of the other letters; but I can see that there is an attempt at an immitation in Henry Wade. I should say, from the first glance I had of them, that they were written by the same person, and same hand. I think they are written by the same.

o 49. Question. Will you look at the two signatures made by yourself in receipt of July 9th, 1866, and March 4th, 1867, and say whether the letters are of the same shape, and whether the two signatures resemble each other?

Ans. I never did make two D's alike. The signatures are alike. All the letters are not alike.

(Certified copies annexed, marked I & T.—J. M. D., N. P.)

p 49. Question. Was your brother Robert as much in your confidence during the first half of 1871, and up to the time when you went to Europe, as he had been before?

65 Ans. Just about the same. He never was much in my confidence. I saw just as much of him as I ever did—just about the same always.

q 49. Question. Did you not allow him to keep the key of your tin box in the safe previous to the time of your leaving Cincinnati?

Ans. I did during my absence from the city. I trusted him as a sister would a brother.

r 49. Question. Now, if about that time he had told you that it was better to sell the Western Union stock that was left, and buy it in again, and make some money by the operation, might you not have given your assent to that, and afterwards forgotten about it, trusting that he would buy it in at a lower rate, and that you would continue to hold the stock as before?

Ans. Never; such a thought never entered my head, such as selling my children's stock—never for one instant.

66 *s.* 49. Question. You don't mean to say, I suppose, that such a thought did not enter your head when you sold the Russian extension stock, and that you had entirely forgotten about it until your order for the sale of it was showed to you here to-day?

Ans. The Russian extension stock and the Western Union Telegraph stock are two entirely different stocks. The Western Union stock was good to keep and the Russian extension to sell.

50. Question. Was the bank account opened before or after the sale of the house on Avondale in your name? Was that sale made for cash, or part cash and part time?

Ans. The bank account was opened before the sale. The sale was made part cash and part time.

51. Question. State if you recollect how much was cash and whether that amount went into bank to your credit?

67 Ans. I think it was twenty-five thousand. It did.

52. Question. When were the government bonds you have spoken of purchased?

Ans. I think about that time. I don't recollect exactly. It was out of that money or part of it.

53. Question. What was the amount of the government bonds and who attended to making that purchase?

Ans. Fourteen thousand was the amount, and Robert bought them. He was then in Kinney's Bank. They attended to it for me.

54. Question. What official position did Robert afterwards occupy in the 4th National Bank? For about what length of time and what appointment did he then receive?

Ans. He was first teller, afterwards made cashier. From about 1867 to 1871, or about four years. I think he was there when I left the
68 city to go to Europe in 1871, and that he was soon after appointed by the government examiner of national banks for Northern Ohio.

55. Question. Was your first bank account opened at the Fourth National or with E. Kinney & Co.?

Ans. With E. Kinney & Co. It was transferred to the Fourth National Bank when Robert took a situation there.

56. Question. Have you been in the habit of preserving your checks after they were returned?

Ans. I did do it for some time, and then I destroyed a great many of them.

57. Question. Have you still the checks or any of them drawn by you for the two years previous to your going to Europe?

Ans. I think not; I think when I went away I destroyed them.
69 It made such a package to carry about. I thought they would be no longer of use.

58. Question. If I understood you, you drew no checks whatever against your bank account after you sailed for Europe?

Ans. I did not.

59. Question. Do you not remember on several occasions of your brother Robert bringing checks to you, payable to your order, and your endorsing your name on them?

Ans. I do not remember. If he ever did I have entirely forgotten it.

60. Question. If he had brought to you a check for the amount of the proceeds of the sale of your three hundred and ninety shares telegraph stock, payable to your order, and either given it to you or obtained the endorsement of your name on the back of it, do you think you would have remembered it to this time?

70 Ans. I certainly think I should have remembered it.

61. Question. And if the same thing had occurred subsequently, in reference to the sale of the four hundred shares, do you think you could have forgotten that, also?

Ans. No; I do not.

62. Question. Do you recollect making any demand upon Robert after either of those two sales for the money that he got for the sales?

Ans. I did for the four hundred shares.

63. Question. Can you state any reason why you did not make the like demand after the sale of the three hundred & ninety shares?

Ans. The four hundred shares were bought shortly after the three hundred and ninety were sold. I only know that I got the money and the shares. I supposed that the three hundred and ninety or the
71 proceeds of the sale of the 390 were used in the purchase of the four hundred.

64. Question. Do you recollect furnishing any money in addition to the proceeds of the three hundred and ninety with which to purchase the four hundred?

Ans. I did not. The stock was bought in for less than it was sold, making me money instead of my giving money.

65. Question. How were you made aware of the fact that it was bought for less than it was sold for, thus making you money?

Ans. By Robert.

66. Question. Did he show you any account of sales; if so, where did the sales appear to have been made?

Ans. I don't remember that, whether he did or not. I thought that they were made at S. B. Keys & Co. I think it pretty safe to say that S. B. Keys & Co. got it.

72 67. Question. About how long did you hold the four hundred shares before they were sold?

Ans. As near as I can remember it was about three years. I don't remember exactly.

68. Question. What is your recollection as to the price at which the four hundred shares were bought, and at which they were sold?

Ans. That I don't remember at all.

69. Question. You spoke yesterday of Robert coming to you urging the sale of that four hundred shares on that very day, and I think your recollection then was that it was sold for about 33. Is that still your impression?

Ans. It is still my impression.

70. Were you under the impression that it sold for more than it cost or less?

73 Ans. I don't remember that, for I do not at all what it cost, and therefore can't say whether I made or lost.

71. Question. Were there any dividends declared upon it while you had it?

Ans. I think not. I don't remember. I am under the impression

that I received one dividend after my husband's death, but I think it was before I purchased the four hundred shares. I think the dividend I received was two per centum.

72. Question. After the sale of the four hundred shares, you are quite sure you got more of the proceeds, are you?

Ans. I am. I have thought that I never got it.

73. Question. What reply did your brother Robert make to you when you demanded of him the proceeds?

Ans. I asked him if he had bought the stock. He said it was all gone; all lost. It was to have been sold and other stock bought as before. He told me to wait until he went over and asked Mr.
74 Keys. He came back and told me that M'r Keys advised me to sell; that stock was going down. I remember that he told me it could be sold at 33, and, in a day or two, bought for much less, and I could make some money by the operation.

74. Question. How long was it after the sale that Robert told you it was all gone, all lost?

Ans. He told me to come in a day or two and see about it, so that I suppose it was in a day or two after that.

75. Question. And your impression is that this transpired one or two years before you went away to Europe?

Ans. My impression is that it was in 1870.

76. Question. Was Robert in the habit of rendering to you accounts from time to time of moneys received and paid out for you?

Ans. He was, but I was not as particular as I ought to have
75 been. He being my brother, I trusted him too much.

77. Question. Did he appear to keep his account with you in any book, or did you keep any book-account with him?

Ans. It was all in the bank-book, the one book, as far as I know. I did not have any book but that.

78. Question. What have become of the accounts which Robert rendered to you on paper from time to time?

Ans. The only accounts I have are in that book, the pass-book. Those are all I have, and I have not looked at those, because I did not know I had it.

79. Question. At any time after your husband's death did you keep any account of the money you were expending on account of your children or yourself, so that you can state about how much your out-goes were annually or monthly?

76 Ans. I never did keep any account between myself and my children of their expenses. I never separated theirs from mine.

80. Question. About how much did you realize from the sale of the Russian extension stock, and who got that money, yourself or Robert?

Ans. I do not remember how much I realized. I got the money, perhaps not all of it.

81. Question. I understood you yesterday that Robert attended to the sale of that, and that he sold it here in Cincinnati to M'r Keys. Is that your present recollection of the transaction?

Ans. That is.

82. Question. What is your recollection as to the time when that occurred?

Ans. I think it must have been in 1866. I am not sure about it.

77 83. Question. Have you no recollection of being in New York yourself, calling on M'r A. L. Mowry about that time and receiving from him the proceeds of that sale in a check or draft?

Ans. I never saw M'r Mowry in my life. I never was in his office. I did not know he had an office.

84. Question. Have you no recollection of having a check on Mowry, Keys and Beun, for the proceeds of sale of the Russian extension stock, or of the amount of such proceeds?

Ans. I don't remember anything about that. It is so long ago that I have forgotten.

85. Question. Did that Russian extension stock belong to you, or did your children each own one-third of it?

Ans. It belonged to me, or I could not have sold it.

86. Question. Could you not as guardian for your children have
78 sold their interests, or did you not so understand it at the time?

Ans. I suppose I might have sold it as guardian. I don't remember. If it was so, I suppose it was sold that way. I know that I was advised to sell it at the time. Russian extension stock, at that time, was not very good to hold. It was not considered good, at least. I do not remember who advised to sell.

87. Question. Is it your impression now that the will gave the Russian extension stock to yourself exclusively, or to yourself and the children jointly?

Ans. I don't remember that. I had an idea that *that* it belonged to me. I don't remember; it was a long time ago. I do not remember whether anything was ever said about the Russian extension stock.

88. Question. If you had thought, in 1866, of selling your children's stock as guardian for them, would you probably have asked them to sign the transfers, or would you have acted for them as guardian in that behalf?

Ans. I should not have sold anything belonging to them, to my knowledge, without taking the advice of a lawyer.

89. Question. Have you any recollection of taking the advice of any lawyer in regard to the sale of your children's interest in the Russian extension stock?

79 Ans. I don't remember anything about it. I don't even remember that they had any interest.

90. Question. If you had sold their stock as guardian, would you or not have been sure to remember it?

Ans. I think I should.

91. Question. Please to look at the paper now shown you, purporting to be an order from you (and a certified copy of which is to be hereto annexed, marked "E") on the executors of Charles Davenport for the sale of the Russian extension stock, and say whether you recognize the signature to that as written in your hand.

Ans. This was before I got home. It is my writing—that is, the signatures are.

92. Question. Do you know of your or your children's assent to the sale of that stock being given in any other way than by that order (Exhibit F)?

Ans. I remember very little about it. I just remember that
80 it was sold, & that is all.

93. Question. I see there is a dividend on Western Union with which the executors charged themselves in their account, amounting to $2,950.00, of date April, 1865. Please to look at the paper now shown you, of date April 25th, 1865, purporting to be your receipt to the executors for the amount of that dividend, and to be a credit on the allowance for the support of yourself and children for one year, and state whether you recognize the signature as your own.

Ans. That is my signature.

(The paper referred to, or a copy thereof, marked "Exhibit G.")

94. Question. And do you also recognize your signature to the receipt for five hundred dollars on May 12th, 1865, from R. W. Rickey?

Ans. Yes, sir; I recognize the signature.

95. Question. Have you a recollection now as to the amount
81 allowed by the appraisers to you and your children for one year's support?

Ans. So far as I recollect, nothing was allowed, nothing set apart, for that. It may have been done, and I have known about it at the time, but have forgotten.

96. Question. Did you take the five-thousand-dollar note of R. W. Rickey to your own individual account, or to the account of yourself and your children jointly?

Ans. I don't remember what the ar'angement was.

97. Question. Do you remember about how much money you received during the first year after your husband's death?

Ans. I do not.

98. Question. What became of the security to the five-thousand-dollar note of R. W. Rickey, being five shares of one thousand dollars each, in the banking house of E. Kinney & Co.?

82 Ans. M'r Wetmore had these and he sent them to Robert. Robert came to me and said he wanted to withdraw from that firm and go into some other business. I don't remember now whether I gave him the order or whether I wrote myself to M'r Wetmore. When I asked him about it afterwards he told me he had invested it in stock and lost it, that is the way I understood it. I did not get the principal nor much of the interest of Robert's note. He was to have paid me five hundred dollars a year interest, on the five thousand. I think he paid me five hundred in 1865 or 1866. I think the note shows. I think that was the last I received.

99. Question. You understood those shares in the the bank of E. Kinney & Co. to be good for their face, that is, good security for five thousand dollars, I suppose?

Ans. I supposed it was.

100. Question. Look at the papers now shown you, copies of which
83 are to be attached hereto, marked Exhibits H, I, & T, purporting to be receipts given by you to executors, of dates September 26th, 1865; July 19th, 1866; and March 4th, 1867, and say whether the signatures are in your handwriting.

Ans. They are my signatures.

101. Question. State now whether since the last adjournment you have looked for the correspondence had with your brother Robert while you were in Europe; and, if so, whether you have found any of the letters.

Ans. I have looked, but could not find any of them.

102. Question. In the accounts which he rendered to you from time to time, and which you have testified to be lost or destroyed, do you remember whether there was an account showing the sale of your three hundred and ninety shares of telegraph stock, the buying in of four hundred other shares, and the sale of the latter?

84 Ans. I do not remember now. It happened so long ago, I have forgotten.

103. Question. Did you have any account showing that those transactions last named were with S. B. Keys & Co.?

Ans. I do not remember. I was under the impression that they were, but I won't be sure of that now.

104. Question. Are you sure that the four hundred shares you have referred to were ever actually bought in; and, if so, how do you know they were?

Ans. I know I saw it, and signed the transfer of the certificate the day that Robert told me it was best to sell it.

105. Question. And about what time was that?

Ans. I did not remember the time myself. Some time in the summer of 1870, I think.

85 106. Question. Did you read the certificate at that time, so as to be sure it was for four hundred shares, or did you depend upon Robert's statement about that?

Ans. I knowing I had the four hundred shares, it is likely I would have looked at the numbers. I do not think it is likely I would have signed a paper without looking to see what it was.

107. Question. Might you not have signed your name to more than one certificate at that time?

Ans. I was under the impression that I signed but one, so many things have transpired, and it is so long ago that it is impossible for me to remember everything I ever did.

108. Question. The day that you left Cincinnati to start for Europe, you sent for the box. Who brought it to you?

Ans. I sent my daughter for it, and Robert brought it to me
86 with her. She came back with him as near as I can recollect.

109. Question. And was it then opened in Robert's presence by him or by you?

Ans. It was not opened by either of us in my presence.

110. Question. When had you last, previous to that time, seen the contents of that box?

Ans. I cannot remember.

111. Question. When you verified the petition in this case were you not under the impression that you saw the contents of that box just before you left Cincinnati for Europe?

Ans. I don't remember the dates. I supposed what I placed there was there, or I never should have left for Europe.

112. Question. You drew several checks on your bank account
87 on the day you left Cincinnati or the day before, three checks being charged to you on the pass-book as of date June 20th, 1871, and none after that except one, June 26th, for one hundred dollars, which you drew at Cleveland. In view of these facts, what is your best recollection as to date when you left Cincinnati?

Ans. I don't recollect the date. I was at the Burnet House from the first of June until I left. For about two weeks, perhaps more. Not so much as three, I am sure.

113. Question. You took no considerable sum of money with you from Cincinnati in cash or exchange, did you?

Ans. I did not.

114. Question. About what time was the loan of fifteen thousand dollars made to M'r G. Simon, and who attended to make that loan for you?

88 Ans. I think it was about 1868. I heard that M'r Simon wanted the money from Robert, and I did it with Gen. Burnett's advice.

115. Question. Who handed the money to M'r Simon, and was it by check or in currency?

Ans. That I don't know. All I know is that he got the money. I do not know who handed him the money.

116. Question. Did your check on your bank account for it?

Ans. That I don't remember.

117. Question. Do you remember what was sold, if anything, to produce that money?

Ans. That I don't remember.

118. Question. Is it not your impression that the money loaned to Simon was the deferred payment made by M'r Glenn on account of purchase of house at Avondale?

89 Ans. It is.

119. Question. Has there ever been more than five thousand dollars of the loan to Simon paid back, and about what time was that paid?

Ans. That is all that I have ever received. As to the time I don't remember exactly. It was a year or more before I went to Europe.

120. Question. And when did he stop paying interest, as far as you know?

Ans. I don't know when he stopped. There was one payment after I went away, none after.

121. Question. Of the cash payment of twenty five thousand dollars you received from M'r Glenn, you think fifteen thousand dollars went into government bonds. Have you any recollection or impression as to what was done with the other ten thousand?

Ans. Some of it went to pay debts, the greater portion.

90 122. Question. Have you any memorandum or means of stating the numbers of the government bonds that were bought, or of what class or description they were? Did you ever know anything as to those matters?

Ans. I have not any memorandum. I never knew the numbers. I did know the class of the bonds at the time, but do not know now.

123. Question. Was it your understanding that any or all of those bonds first purchased were sold, and other bonds bought?

Ans. I don't remember anything about the bonds—only what I have said about them.

124. Question. Did Robert never report to you the sale of some or all of those bonds previous to your going to Europe?

Ans. No; he did not, of the ten thousand bonds. I never knew they were sold until 1873.

91 125. Question. About what time did you purchase the property where you afterwards resided, on Walnut Hills?

Ans. I think about 1868. On looking at the deed, I see it is Oct. 28th, 1868.

126. Question. Please look at the contract between you and Simon, and state if you can recollect the date of the loan to Simon?

Ans. The 27th day of September, 1866.

127. Question. Our information is that you paid ($22,000.00) twenty-two thousand dollars for the house on Walnut Hills, and expended about three thousand dollars in improvements on the place. Is that according to your recollection?

Ans. Something about that.

128. Question. What was your impression as to where the money came from for that investment?

Ans. It comes from property belonging to myself.

92 129. Question. Was it your impression that it was a part of the proceeds of the sale of the place at Avondale, or the proceeds of the telegraph stock left to you?

Ans. It was some of both.

130. Question. Do you still hold the place on Walnut Hills?

Ans. I do. I think I do. I am not sure of anything.

131. Question. Do you still hold the Simon mortgage?

Ans. I do.

132. Question. Have you still the pass-book which you kept with the banking-house of E. Kinney & Co.? If so, please allow the notary to take copy of same.

Ans. I do not know what has become of it.

133. Question. Had you or your children any other property or income than that left by your husband?

93 134. Question. When the purchase of government bonds was first made, was R. W. Rickey with E. Kinney & Co. at that time, and do you remember whether you checked on your bank-account to pay for the bonds?

Ans. Robert Rickey was with Kinney & Co. About the check I do not remember.

135. Question. Will you please procure & furnish, to be annexed as exhibits, a copy of your bank-account as it appears on the ledger of E. Kinney & Co. & Fourth National Bank, the defendant paying any expense to the clerk for making the same?

Ans. I will if I can get them.

136. Question. Are you able to state now on what day of the month or week in 1871, you left the Burnet House for Cleveland, being on your way to New York and Europe?

94 Ans. I believe the books at the Burnet House show that it was on the 20th of June after tea. I think that is correct, as near as I can tell.

137. Question. Please examine copy of your ledger-account with E. Kinney & Co., and state as nearly as you can now recollect from what sources you derived the monies deposited to your credit in April and May, 1865, amounting to $5,634.40.

Ans. I made sales about the premises after my husband's death, particularly horses and carriages and some of the household furniture. Those credits I think are from the proceeds of such sales, except two items, namely, 1st, item for $2,952.40, which, from the vouchers now shown to me, I think it money paid to me by the executors, and the item of $500, which was paid to me by R. W. Rickey, on his note to the estate.

138. Question. Do you recollect whether, when those deposits were made with E. Kinney & Co., you went personally to E. Kinney & Co. with the money to their bank?

95 Ans. I don't remember. I don't remember anything about that.

139. Question. Look at the items of credit of July 10th, 1865, for $520.00, and state as nearly as you can where that money came from.

Ans. I sold a corner off my lot at Avondale for about $700, and I think this credit came from that; but, as now shown to me, the credit is only for $520, so it could not be from that. I never deposited so small an amount as that ($520) I am very certain.

140. Question. Look at item of August 9th, 1866 ($25,000.00), and state where that money came from.

Ans. That is from Mr. Glenn, on the sale of the house.

141. Question. What investments, if any, do you recollect making from that twenty-five thousand dollars ($25,000.00), looking at the

96 amounts of the checks charged to you in said bank account, within two or three weeks after you received that money?

Ans. I recollect only investing in bonds; I think they amounted to fifteen thousand. I don't remember making any other investment.

142. Question. Do you think the bank would have paid out any of that money after it was deposited without your signature to a check?

Ans. I think they ought not to.

143. Question. Do you think that you did not sign the three checks charged to you within three weeks after that deposit, amounting to over $21,800.00?

Ans. I don't remember; but I suppose I must have signed them.

144. Question. Did Mr. Glenn hand the twenty-five thousand dollars to you personally; and, if so, whether in currency or in a check?

97 Ans. He gave it to me in a check. I am pretty sure he gave it to me personally.

145. Question. In the next month, to wit, Sept. 29th, 1865, you appear to have deposited two thousand dollars ($2,000); have you any recollection where that came from?

Ans. By the account now shown me, that came from the executors.

146. Question. Who attended to the purchase of those bonds for you?

Ans. R. W. Rickey.

147. Question. In October 4th, 1865, you appear to have drawn a check for two thousand and nine dollars and forty cents (2,009.40), and on Oct. 5th, 1865, two thousand and nineteen dollars (2,019.80) and eighty cents; have you any recollection about those checks?

Ans. I do not recollect anything about them. I know I never drew two thousand dollars on two successive days for personal expenses.

98 148. Question. In 1866, Feb. 7th, you appear to have opened an account at the Fourth National Bank by depositing the sum of five hundred dollars ($500.00). Can you state where that money came from?

Ans. I don't know where that five hundred came from; I don't remember.

149. Question. Look at the credits for deposits in March, 1866, to wit: On March 2nd, $203.08; March 17th, $509.20; March 28th, $1,330.00; March 29th, $511.65; March 31st, $2,047.40—amounting to about 4,600 in the aggregate. State if you know where any of the items came from.

Ans. I don't know where either of those items came from. I don't remember.

150. Question. Had you any other source of income during that month other than the interest on the government bonds, if any became due in that month; and, if so, from what?

99 Ans. I don't remember. I don't know where those credits came from. I had no productive property at the time, except those bonds.

151. Question. Can it be that you went to the bank five times during that month and made those large deposits, and yet have forgotten it?

Ans. I think I should have remembered.

152. Question. In the next month, to wit, April 3rd, you appear also to have deposited $2,047.35. Have you any recollection of that, or where the money came from?

Ans. I have no recollection of that.

153. Question. On May 14th, same year, you appear to have checked for $4,504.36. Have you any recollection what that could have been for?

Ans. I think that was for a monument, and was in addition to five hundred which I had previously paid.

100 154. Question. On July 9th, 1866, you appear to have deposited $1,035.00, and on the 26th, $358.00. Have you any recollection where those moneys came from?

Ans. No, sir; I have not. I do not recollect anything about it.

155. Question. And on August 9th you are credited with $600.00, August 15th, $400.00. Can you form any idea where that money came from?

Ans. I can form no idea, unless it was the interest on the bonds.

156. Question. In what months of the summer were you absent from Cincinnati?

Ans. I don't remember when I went, nor when I came home. I remember that I was away. I don't remember the exact time. I don't think I was home in July and August.

101 157. Question. In the next month, September 12th, you appear to have received from M'r Glenn $15,907.50, and deposited it to your credit. On the 27th of the month you drew a check for $15,520.00. State if you recollect what that check was for.

Ans. I think that must have been for money loaned to Simon on mortgage—only I think the loan to Simon was $15,000.00 even.

158. Question. On January 8th, 1867, I see you are credited with a deposit of seven thousand and ninety-eight dollars ($7,098.00). What money is that, or where did that come from?

Ans. I think it is from the sale of the Russian extension stock.

159. Question. On February 16th, 1867, you are credited in bank with five thousand dollars ($5,000.00), and on March 5th, same year, two thousand dollars. Have you any idea where that money came from?

Ans. I have not.

102 160. Question. Had you any other source of income during those months, so far as you know, except the interest on the government bonds you have referred to, and interest which was accruing on the loan to Simon?

Ans. I don't remember.

161. Question. Have you any recollection of directing a sale of a part of the government bonds at any time after they were purchased?

Ans. As far as I recollect I never did up to that time, 1867. When I bought my house I sold some government bonds, but that was in Nov., 1868, I think.

162. Question. In 1868, March 13th, you appear to have deposited $1,300.00; have you any idea where that money came from?

Ans. I don't remember.

103 163. Question. These several deposits that I have been asking about, made during the proceeding year, do you think you knew about them at the time, or were they matters that M'r Rickey attended to?

Ans. If I did know about them I have forgotten.

164. Question. Do you recollect whether you kept your pass-book with the bank yourself at that time, and took it to the bank and away from the bank every time there was an entry made to your credit?

Ans. I did not. I left my bank-book there at the bank, not all the time, but a good deal of the time.

165. Question. I see that by your bank account that a day or two after you deposited $7,098.00 from sale of Russian extension stock, you appear to have checked for $7,075.75; can you state what investment was made with the check?

Ans. I suppose bonds were bought with it.

104 166. Question. On March 5th, 1867, you are credited with $2,000.00 deposited; can you state where that money could have come from unless from the sale of bonds or stock?

Ans. I don't remember. I can't remember now.

167. Question. And in July 31st, 1867, you appear to have been credited in bank with $2,698.00; on October second, same year, with $750.00; do you think that you have handed the money to M'r Rickey with which to make the deposits, or that you handed the money to the bank yourself, or that it was a matter that M'r Rickey attended to without any particular knowledge of the transaction on your part?

Ans. The deposit in July I don't remember about. I suppose it must have been Robert's buying and selling my stocks and bonds while I was away. As to the $750, it may have been interest on the bonds.

105 168. Question. On February 4th, 1868, you are credited with $3,673.88; is it your impression that you handled as large an amount of money as that at that time in that month?

Ans. I think not.

169. Question. In 1868, November 2nd, you are credited in bank with $2,762.50; on the 14th of the same month with $1,600.00; and on the 16th with $2,700.00; have you any recollection about those monies?

Ans. I think that came from the sale of bonds made for the purpose of making first payment on house on Walnut Hills.

170. Question. Do you recollect how much more than that first payment has been made on that house?

Ans. It is all paid but five thousand dollars ($5,000.00).

171. Question. In 1869, May 1st, you are credited in bank account with $16,729.05; have you any recollection where that money came from?

106 Ans. I presume that that is from the sale of my three hundred and ninety shares of Western Union stock.

172. Q. And your recollection is, that shortly after that Robert told you he had bought in four hundred shares for you?

Ans. Yes, shortly after.

173. Question. I see in your bank account you are several times credited with a call loan; did you ever know how you could get a credit by making a call loan?

Ans. I never did; I don't know anything about it.

174. Question. At the time you left Cincinnati, on your way to Europe, had you any knowledge of the state of your bank account; that is, whether you had a balance to your credit, or whether your account was overdrawn?

107 Ans. I supposed it was all right. Robbert told me it was.

175. Question. July 18th, 1871, there appears to be deposited to your credit 964\frac{33}{100}$, that being the amount to which your account was on that day overdrawn; could you have furnished the money to make that deposit?

Ans. I don't know, not being here. I arrived in Europe six days before that date. I was not aware that my account was overdrawn to that extent, or I should not have gone.

176. Question. I see by the records that on the 18th August, 1873, you made a mortgage to J. D. Cose, trustee, to secure to Edward Silley the sum of 899\frac{94}{100}$, and F. Mock the sum of 107$\frac{50}{100}$; to Duncan, Sherman & Co. $2,211$\frac{42}{100}$, and to Schott & Co. the sum of $5,872; those debts were a part of your expenses while in Europe, were they not?

Ans. They were.

177. Question. Have you any recollection about how much
108 money you expended in improving the place you bought on Walnut Hills, including grading, planting, making walks, &c?

Ans. I have not.

178. Question. Was it not in the neighborhood of two or three thousand dollars?

Ans. I think not more than two.

179. Question. And did not M'r Rickey spend a thousand dollars in building a barn on the ground?

Ans. He built a barn that they say cost a thousand dollars. I don't think it cost more than five hundred.

180. Question. Were your checks returned to you from time to time?

Ans. There were checks returned to me from time to time. I do not say that they were all returned.

109 181. Question. These seven checks, now present, on E. Kinney & Co., you recognize as signed by yourself, do you not?

Ans. They are signed by myself.

182. Question. Do you recollect seeing at any time among those returned to you, checks signed E. E. Davenport, per R. W. R. or R. W. Rickey?

Ans. I do remember seeing them.

Re-examination of Euretta E. Davenport by John F. Follet, esq're.

1. Question. State whether or not you saw, on the 20th of June, 1871, previous to your leaving the Burnet House, or at any other time, the certificate of the stock of the Western Union Telegraph Company, numbered 15363, to your daughter, Katharine J. Davenport.

Ans. I did not see it on the twentieth of June. I can't remember now when I did see it, previous to that time. I did not see it un-
110 til after that time, until quite recently.

2. Question. Did your brother, Robert W. Rickey, accompany you when you left Cincinnati on the twentieth of June, 1871?

Ans. He did not.

3. Question. When and where did you next see him after that time?

Ans. I saw him in New York city a day or two before I left for Europe. I think I found him there when I arrived in New York. I sailed for Europe on the first day of July, 1871.

4. Question. Will you look again at the book, a copy of the entries in which are hereto attached, purporting to be your pass-book with the Fourth National Bank, and state whether or not, as you are now advised, it is in fact what it purports to be, or if you know what it is?

Ans. It is not my pass-book of the Fourth National Bank. I
111 do not know what it is.

(Copy of book referred to is annexed, marked "Exhibit K.—J. M. Dawson, N. P.")

EURETTA E. DAVENPORT.

HENRY W. DAVENPORT, of lawful age, being by me duly sworn, deposes and says:

1. (Question by J. F. Follett.) State your name, age, residence, and occupation.

Ans. My name is Henry Wade Davenport. I shall be twenty-one years of age the 25th April, 1875. Residence is now at Lusquehouse Depot, Pennsylvania. From January, 1874, I was assistant draughtsman on the Erie Railway for about six months. Then my name was

put on the books as a machinist, in which occupation I am now employed.

112 2. Question. State the names of your father and mother, and whether they are living or dead.

Ans. My father's name is Charles Davenport, who is dead. My mother's name is Euretta Elizabeth Davenport, who is now living.

3. Question. When did your father die, and where were you living at the time of his death?

Ans. My father died on the fourteenth of March, 1865. I was living at Avondale at the time.

4. Question. Who was appointed your guardian after your father's death? and state what property, if any, you received from your father' estate, as near as you can recollect.

Ans. My mother was my guardian, and I received three hundred and ninety shares of Western Union Telegraph stock, as far as I can recollect.

5. Question. Have you ever examined the settlement of the ac-
113 count of the executors of your father's last will and testament to ascertain what property you were entitled to under the provision of his said will as shown by said accounts?

Ans. I never have.

6. Question. Where were you during the year 1871?

Ans. In the year 1871, I was in Vevay, Switzerland, at school.

7. When did you leave Cincinnati for Europe, and when did you return to Cincinnati from Europe?

Ans. I think I left Cincinnati on the 9th of July, 1870, and sailed from New York on the 12th of July. I remained in Europe until the 5th of December, 1873, and arrived in this count'y about the 20th.

8. Question. Previous to your leaving this country for Europe in 1870, as you have stated, did you at any time see any certificate or cer-
114 tificates for the three hundred and ninety shares of Western Union Telegraph stock belonging to you, as you have stated?

(Objected to as leading by counsel for def't.)

Ans. I never did.

9. Question. Look at the certificate of stock now shown you, a copy of which is hereto attached, marked "Exhibit A," and state when you first saw the same.

Ans. The first time I first saw it was on the 16th December, 1874, in the office of Cox and Follett.

10. Question. Look at the signature, "Henry Wade Davenport," to the pretended transfer or warrant of attorney to transfer said certificate of stock, and state whether it is your signature, and what, if anything, you know about said signature.

Ans. It is not my signature, and I do not know anything about it.

115 11. Question. Where were you on the 23 day of February, 1871? and state whether or not you know R. W. Rickey, and whether he was with you upon that day.

Ans. On the 23d day of February, 1871, I was in Switzerland. I do know R. W. Rickey. He was not with me on that day.

12. Question. Where had you last seen R. W. Rickey, previous to the 23rd day of February, 1871, and when did you next see him?

Ans. The last time I saw him was about the 8th of July, 1870, previous to the 23rd day of February, 1871. I next saw him in Susquehanna Depot, in 1874.

13. Question. State whether or not the signature "Henry Wade Davenport," as it appears upon said certificate of stock at the end of the

pretended transfer thereof, to wit, certificate number *number*
116 15362, for three hundred and ninety shares of the stock of the Western Union Telegraph Company, was written by you in the presence of R. W. Rickey, or was written by you at all.

Ans. It was not. It was not written by me at all.

14. Question. State whether or not you ever authorized any one to transfer said certificate of stock, or in any manner to sell or dispose of the same.

Ans. I never did. I never had authority to do it.

15. Question. How old were you on the 23rd day of February, 1871?

Ans. I was sixteen years old. I was seventeen on the following April.

16. Question. State whether or not, to your knowledge, you have received any part of the proceeds of the sale of said stock under said pretended transfer, or been otherwise benefited by such sale or attempted transfer.

117 Ans. I never have.

17. Question. Where did you first learn of the attempted transfer of said certificate of stock?

Ans. In the summer of 1873, I think.

18. Question. Have you received any payment or dividend on said three hundred and ninety shares of stock for which said certificate was issued to you since the 23rd day of February, 1871?

Ans. No; I have not.

19. Question. Look at the signature, "H. W. Davenport," upon a passport given to you by the legation of the United States of America in France, under date 9th of August, 1870, and which passport is marked for identification by the notary public with the style of this case, "J. M. Dawson, notary public," and state whether or not said signature was written by you, and when it was written.

Ans. It was. It was written on the 9th August, 1870, in the
118 city of Paris, France.

20. Question. Have you ever had any other guardian than your mother Euretta E. Davenport?

Ans. I never have.

21. Question. Are you familiar with the handwriting of your sister, Katharine Josephine Davenport?

Ans. Yes.

22. Question. Look now at the signature "Katharine Josephine Davenport" attached to the pretended transfer of certificate number 15363, a copy of which is attached to this deposition, marked "Exhibit B," and state whether or not it is the genuine signature of your said sister.

Ans. It is not.

23. Question. How many children did your father Charles Davenport leave surviving him?

119 Ans. He left two, my sister Katharine and myself.

Cross-examination by J. C. Collins, esq're:

1. Question. Did you ever have any income of your own prior to your return from Europe in Dec., 1873?

Ans. I never did.

2. Question. How long have you been in receipt of a salary, and how much?

Ans. I received a salary of fifty dollars a month when I was assistant draughtsman on the Erie Road. When I went into the shop, I received two dollars a day.

3. Question. Did you ever keep an account of your expenses prior to 1874?

Ans. I never did.

4. Question. Who furnished you money to pay your expenses?

120 Ans. My mother paid my expenses.

5. Question. When did you last see R. W. Rickey, and where?

Ans. The last time I saw R. W. Rickey, he was passing through the Erie Railway shops at Susquehanna Depot in Pennsylvania, he being there to pay the men. In November I think, 1874.

6. Question. Has he employment at present on the Erie Road; and, if so, where is his residence or headquarters?

Ans. He has. He lives part of the time at Port Jervis, and part in New York City.

7. Question. How many times have you seen him since you returned from Europe?

Ans. I don't remember; only a few times.

8. Question. When did you see him; did you ask him why he

121 signed his name as a witness to your signature to the transfer of that stock, or tell him that you never made that signature?

Ans. I never spoke to him at all since I returned from Europe.

9. Question. Were you on good terms before you went to Europe?

Ans. Not on extraordinary good terms.

10. Question. You called on him frequently for money, did you not?

Ans. No; never.

11. Question. Did you ever see the tin box in which the stock and bonds are said to have been kept?

Ans. Yes.

12. Question. On what occasions and how long was it?

Ans. I went to the bank once with my mother once and saw it. That is the only time I ever remember seeing it. I should say it was

122 about ten or twelve inches long, about seven or eight inches wide, and about five inches high.

13. Question. Do you remember what the occasion was for going to the box at that time, and did you see the contents of the box?

I don't know anything about why we went there—I did not see the contents of the box.

14. Question. Do you consider yourself an expert at judging handwriting?

Ans. No; I do not consider myself an expert.

15. Question. Can you say upon a comparison of the signature to the transfer of your stock with the signature to the transfer of your sister's stock whether they were both written by the same hand?

Ans. I am not sure whether they are or not.

123 16. Question. Will you please produce specimens of your handwriting as well as your signatures prior to your going to Europe, or, if you have none of that period, produce any written prior to April, 1873.

Ans. I will look for specimens and produce them if possible after next adjournment, and authorize the notary to annex or identify them in such a way as shall be agreed upon by counsel.

17. Question. Do you recollect of seeing the tin box in which your mother's papers were kept at the Fourth National Bank only once?

Ans. I only remember seeing it once.

18. Question. What has impressed that upon your memory?

Ans. Because I don't think I ever saw it more than once. I don't recollect particularly what caused me to recollect that.

19. Question. Do you remember about what time of day it was when you saw it at that time, or who was present.

124 Ans. I do not remember exactly at what time of day it was; I think it was in the forenoon. My mother and I were the only ones present with R. W. Rickey.

20. Question. Did you see where the box was taken from by R. W. Rickey, that is where he kept it?

Ans. I think he took it out of the safe.

21. Question. Do you recollect whether it was opened at that time, and, if so, who opened it?

Ans. I believe it was opened. I don't know who opened it. I didn't pay much attention to it.

22. Question. Do you remember whether it was placed on the counter, or whether it was taken into a side office?

Ans. It was taken into a side office, into the back office of the Fourth National Bank. It was a room in the rear of the main office. I
125 do not know how it was used. It had a table, carpet, and chairs; fitted up for an office.

23. Question. Can you state in what month, in what year that was?

Ans. No; it was a good while ago; I don't remember.

24. Question. It was before you left for Europe, of course?

Ans. A good while, I think, before I left for Europe.

25. Question. Were you ever informed before you left for Europe that you were the owner of three hundred and ninety shares of the Western Union Telegraph stock; and, if so, by whom?

Ans. I knew that I had some telegraph stock, but how much, or how little, I did not know. I think my mother gave me that information.

26. Question. Were you informed also that that was all the property you had?

126 Ans. That was all I ever heard of.

27. Question. Were you informed whether your telegraph stock was paying dividends before you went to Europe?

Ans. I don't remember.

28. Question. Do you know what your individual expenses amounted to for two years prior to your going to Europe and while in Europe?

Ans. I don't think they amounted to very much. That I don't know anything about. I kept no account of them.

29. Question. Did you and your sister while in Europe live at the same hotel?

Ans. No; I was at a boarding school; my mother and sister were together.

30. Question. You have said in your examination-in-chief that you got none of the proceeds of the sale of your telegraph stock; where did you get money then with which to pay your expenses for five years
127 prior to your return from Europe?

I did not pay my expenses. My mother paid them.

31. Question. You don't mean to say then that she may not have received the proceeds of the sale of your telegraph stock and used them in paying your expenses?

Ans. I only knew that bills were paid as far as I knew anything about it.

32. Question. Did you ever hear anything said before you went to Europe as to the market value of telegraph stock; and, if so, what?

Ans. I never paid any attention to stocks or business of any kind before I left for Europe.

HENRY WADE DAVENPORT.

128 KATHARINE J. DAVENPORT, of lawful age, being by me first duly sworn, deposes and says:

1. (Question by J. F. Follett.) Please state your name, age, and present residence.

Ans. Katharine Josephine Davenport is my name; age, eighteen years the 3rd November, 1874; I live in Cincinnati.

2. Question. State whether or not your father is living; if not, when he died, and the names of your father and mother.

Ans. My father is dead. He died in March, 1865. Euretta E. Davenport is my mother's name, and Charles Davenport my father's name.

3. Question. With whom have you resided since your father's death, and who is your guardian?

Ans. I have resided with my mother, and she is my guardian.

129 4. Question. State whether or not you received any property under the provisions of your father's will; and, if so, the kind and amount of such property.

Ans. I do not personally know anything about it, but I have heard that my mother as my guardian received for me three hundred and ninety shares of Western Union Telegraph stock.

5. Question. Look at certificate No. 15363 of the Western Union Telegraph Company stock now shown you, a copy of which is hereto attached marked "Exhibit B," and state when you first saw it, and whether or not you are the person to whom said certificate was issued.

Ans. Now is the first time I have ever seen it. I suppose I am the person to whom such certificate was issued.

6. Question. Look also at the signature Katharine Josephine Davenport as it appears on the back of said certificate of stock, and

130 purporting to be a signature to the transfer of said stock, and state whether or not it is your signature, and, if not, whether you know who wrote it.

Ans. It is not my signature, and I do not know who wrote it.

7. Question. State whether or not said signature was attached to said transfer on the back of said certificate of stock by your authority, or with your knowledge or consent.

Ans. I do not know anything about said signature. It was not done by my authority or with my knowledge or consent.

8. Question. Where were you on the 20th day of June, 1871?

Ans. My recollection is not very distinct, but I think it was on the evening of 20th of June, 1871, that I left the Burnet House for New York, by way of Cleveland.

131 9. Question. Did you see said certificate of stock No. 15363 on said day, to wit, June 20th, 1871, or at any time about that time?

Ans. No.

10. Question. Look again at said signature, "Katherine Josephine Davenport," on *both* of said certificate No. 15363, and state whether or not the name Katherine as there written is spelled as you spell your name; and, if not, what the difference is.

Ans. I always spell my name with an "a." On the back of this certificate it is spelled with an "e"; that is, Katherine instead of Katharine, as I always spell my name.

11. Question. State whether or not you have ever at any time either sold or transferred, or authorized any one else to sell or transfer, any stock belonging to you, or which has at any time belonged to you, in the Western Union Telegraph Company?

Ans. No.

132 Cross-examination by J. C. Collins, esq.:

Question 1. Can you state how the name Katharine is usually spelled, whether with an "a" or with an "e" in the second syllable?

Answer. It is usually spelled Katharine. When the first letter is "K," it is usually spelled Katharine; when the first letter is "C," it is usually spelled Catherine.

Question 2d. Is it customary in this country to spell the name commencing with "K," instead of "C," with persons born in America?

Answer. No; I think not; but I known several cases in which it was so spelled by persons born in this country.

Question 3d. Are you quite sure that you never wrote your name with an "e" in the middle syllable, instead of an "a," prior to June 20th, 1871?

Answer. I am.

Question 4th. State whether your uncle, R. W. Richy, knew how you were in the habit of spelling your name prior to *to* June, 1871?

Answer. I do no' know.

133 Question 5th. Look at the signature of R. W. Richey, purporting to be signed as a witness to your signature to the transfer of stock in question, of which Exhibit B is a copy, and state whether it is the genuine signature of R. W. Richey; that is, whether it is in his handwriting.

Answer. I don't know whose writing it is.

Question 6th. Were you acquainted with his handwriting *in* June, 1871; that is, had you seen him write frequently?

Answer. No.

Question 7th. Are you an expert in judging handwriting, so that you can tell a genuine signature from one that is an imitation of it?

Ans. No.

Question 8th. Do you think you could tell or distinguish your own signature, in your own hand, from one that was a close imitation of it?

Ans. Yes.

Question 9th. In what way?

Ans. I don't know, except by the formation of the letters, comparing them.

Question 10th. You say the signature on the certificate is *is* not in your hand; state fully in what respects it is different.

Ans. I never wrote so well as that; in so small a hand. I wrote
134 a large hand. I don't see anything else to distinguish it by except the spelling.

Question 11th. Did you ever see the tin box in which your mother's papers were kept at the Fourth National Bank?

Answer. I have, the day we left Cincinnati for New York, on the way to Europe.

Question 12th. Where was it, on that day, that you saw it?

Ans. At the Burnet House, in my mother's room.

Question 13th. Who brought it there and was it opened there?

Ans. M'r Richey had it, and brought it there, so far as I know. I did not see it opened.

Question 14th. What conversation, if any, did your mother have with M'r Richey about it at that time?

Ans. I don't remember. I did not pay attention.

Question 15th. How long did the box remain there in your mother's room?

Ans. I do not know.

Question 16th. Do you know whether M'r Richey left it there or took it away with him?

135 Ans. I think he took it away.

Question 17th. Do you know for what purpose it was brought there?

Ans. No.

Question 18th. Did you hear any talk that day between your mother and your uncle as to money affairs?

Ans. I remember hearing them talk, but I do not remember what the conversation was.

Question 19th. Were you ever informed as to what source of income you had for your maintenance and education?

Ans. No.

Question 20th. Did you ever suppose that you had, of your own right, any property at all? Were you advised on that point prior to June, 1871?

Ans. I had heard that I had some telegraph stock, and that was all that I had heard that I had. I had heard that I had three hundred and ninety shares.

Question 21st. Had you heard prior to June, 1871, whether your stock was paying any dividends or not.

Ans. No, I had not.

136 Question 22d. Had you heard anything said about the value of the stock, and whether or not it was good stock to keep?

Ans. No.

Question 23d. You had entire confidence in your mother and in your uncle, R. W. Richey, I suppose, before you left for Europe?

Ans. I had.

Question 24th. If they had either or both of them asked you at that time to sign a paper relating to business you would have done so without hesitation, would you not?

Ans. Yes.

Question 25th. Who did you understand to be assisting your mother in the management of her business or money affairs before you went to Europe?

Ans. Robert Richey.

Question 26th. Will you please to furnish any specimens of your handwriting or signatures which you can find made prior to June, 1871, also any that have been made since?

Ans. I will, and authorice the notary to annex or to identify them in such way as shall be agreed upon by counsel.

Question 27th. Have you any knowledge as to what your in-

137 dividual expenses were for three years prior to your going to Europe or while you were in Europe?

Ans. No.

KATHARINE JOSEPHINE DAVENPORT.

Question 28th. Do you recollect whether you heard, before you went to Europe, that your mother had sold her Western Union Telegraph stock?

Answer. I remember hearing it. That is all I remember about it.

Question 29th. Do you recollect what reason, if any, was given for such sale being made?

Ans. No, I don't.

Question 30th. Do you recollect whom you heard it from?

Ans. H , I think; I am not sure.

KATHARINE JOSEPHINE DAVENPORT.

138 *Copy of exhibit marked "A" by counsel for plaintiff.—J. M. Dawson, notary public.*

Incorporated. Incorporated.

THE WESTERN UNION TELEGRAPH COMPANY.

Certificate No. 15362.] [Shares, 390.

Henry Wade Davenport is entitled to three hundred and ninety (390) shares of one hundred dollars each in the capital stock of the Western Union Telegraph Company, transferable in person or by attorney on the books of the company only on the surrender and cancellation of this certificate by an endorsemeut thereof thereon and in the form and manner which may at the time be required by the transfer regulations of the company.

In witness whereof the president and secretary of the said company have hereunto subscribed their names at the city of New York, this 13th day of May, 1867.

HIRAM SIBLEY,
V.-President.

H. PALMER, *Secretary.*

[U. States 25c. Power of att'y. Int. revenue.]

(Across the face:) Cancelled.

139 For value received , do hereby sell, assign, and transfer to Souther & Co. three hundred and sixty, and the W'm Heath & Co. thirty (390) shares of the capital-stock of the Western Union Telegraph Company, of one hundred dollars each, standing in name on the books of the said company, and represented by the within certificate, and do hereby irrevocable constitute and appoint J. D. Thompson my attorney, to execute a surrender and cancellation of the within certificate, and also to do all things requisite to transfer the aid stock on the books of the said company, in such form and manner as may be necessary or be required by the regulations of the said company in that behalf, with full power of substitution in the premises.

Dated Feb. 23d, 1871.

HENRY WADE DAVENPORT.

In presence of—
R. W. RICHEY.
SOUTTER & Co.

[25 c. int. rev. stamp.]

140 *Copy of exhibit marked "B" by counsel for plaintiff.—J. M. Dawson, notary public.*

Incorporated. Incorporated.

THE WESTERN UNION TELEGRAPH COMPANY.

Certificate No. 15363.] [Shares, 390.

Katharine Josephine Davenport is entitled to three hundred and ninety (390) shares, of one hundred dollars each, in the capital stock of the

Western Union Telegraph Company, transferable in person or by attorney on the books of the company, only on the surrender and cancellation of this certificate, by an endorsement thereof hereon, and in the form and manner which may at the time be required by the transfer regulations of the company.

In witness whereof the president and secretary of the said company have hereunto subscribed their names, at the city of New York, this 13th day of May, 1867.

HIRAM SIBLEY,
V. President.

O. H. PALMER, *Secretary.*

[United States, 25 cents. Power of att'y. Int. rev.]

(Across the face:) Cancelled by the Farmers' Loan & Trust Company Jan. 23d, 1871.

141 For value received I do hereby sell, assign, and transfer to Soutter & Co. three hundred and ninety (390) shares of the capital stock of the Western Union Telegraph Company, of one hundred dollars each, standing in my name on the books of the said company and represented by the within certificate, and do hereby irrevocably constitute and appoint J. D. Thompson my attorney to execute a surrender and cancellation of the within certificate, and also to do all things requisite to transfer the said stock on the books of the said company, in such form and manner as may be necessary or be required by the regulations of the said company in that behalf, with full power of substitution in the premises.

Dated June 20th, 1871.

KATHERINE JOSEPHINE DAVENPORT.

In presence of—
R. W. RICHEY.
SOUTTER & CO.

[Int. rev. stamp.]

142 *Copy of exhibit marked "C, J. M. D., N. P.," shown by counsel for plaintiff.*

Rec'd of F. Wetmore & J. N. Wade, executors of the estate of Charles Davenport, dec'd, three hundred & ninety (390) shares of stock in The Western Union Telegraph Co., being distributive share of stocks in the hands of said executors, belonging to Henry Wade Davenport, heir of said Charles Davenport, dec'd, as per account filed May 1st, 1867, with probate court. May 1st, 1867.

E. E. DAVENPORT,
Guardian of H. W. Davenport.

[2 c't int. rev.]

Copy of exhibit marked "D, J. M. D., N. P.," shown by counsel for plaintiff.

Rec'd of F. Wetmore and J. N. Wade, executors of the estate of Cha's Davenport, dec'd, three hundred and ninety (390) shares of stock in the Western Union Telegraph Co., being the distributive share of stocks in the hands of said executors, belonging to Katherine J. Davenport, heir

of said Charles Davenport, dec'd, as per account filed May 1st, 1867, with probate court of Hamilton County. May 1st, 1867.

E. E. DAVENPORT,
Guardian of K. J. Davenport.

[2 c't int. rev.]

Copy of exhibit marked "E, J. M. D., N. P.," shown by counsel for def't.

Rec'd of F. Wetmore & J. N. Wade, executors of the estate of Cha's Davenport, dec'd, three hundred & ninety (390) shares of stock in the Western Union Telegraph Co., being the distributive shares of
143 stocks in the hands of the said executors belonging to me as legatee of said Cha's Davenport, dec'd, as per account filed by said ex'rs with the probate court of Hamilton County, Ohio, May 1st, 1867, & also the R. W. Richey note referred to in the inventoy filed by said executors, and also the book account against E. P. Davenport of $290, referred to in said inventory, also certificate 353 for $20, & 336 for $12.50, in Western Union Telegraph Co.
May 1st, 1867.

E. E. DAVENPORT.

[U. S. int. & rev. stamp, 2 c'ts.]

Copy of exhibit marked "F," shown by counsel for def't.—J. M. Dawson, N. P.

Mess'rs J. H. Wade & Frederick Wetmore, executors of the estate of Charles Davenport, deceased:

You will please deliver to Mess'rs Mowry, Keys & Bend, of New York, all the Western Union stock (known as the Russian Extension) belonging or coming to me or my children, Henry Wade Davenport & Katharine Davenport, under the will of Charles Davenport, deceased.
Cincinnati, Oct. 4th, 1866.

EURETTA E. DAVENPORT.
EURETTA E. DAVENPORT,
Guardian for H. W. & K. J. Davenport.

144 *Copy of exhibit marked "G," shown by counsel for def't.—J. M. Dawson, N. P.*

Received, Cincinnati, April 25th, 1865, of J. N. Wade and Fred. Wetmore, executors of the estate of Charles Davenport, deceased, the sum of twenty-nine hundred and fifty-four $\frac{50}{100}$ dollars, on account of allotment for my own and my children's support.

EURETTA E. DAVENPORT.

Dollars, 2,954.50.

Dividend	2,950
Cash	4 50
	$2,954 50

[2 c'ts stamp.]

Copy of exhibit marked "H," shown by counsel for def't.—J. N. Dawson, N. P.

Dollars, 2,000.

Received, Cincinnati, S-pt'r 26th, 1865, of J. N. Wade and Fred. Wet-

more, executors of the estate of Charles Davenport, deceased, the sum of two thousand dollars, on account of allotment for my own and my children's support.

EURETTA E. DAVENPORT.

(Voucher 5.)

[U. S. I. & R. stamp.]

Copy of exhibit marked "I," shown by counsel for def't.—J. N. Dawson, N. P.

Dollars, 500.

Received, Detroit, July 19th, 1866, of J. N. Wade and Fred. Wetmore, executors of the estate of Cha's Davenport, deceased, the sum of five hundred dollars on account.

E. E. DAVENPORT.

(Voucher.)

[Stamp.]

145 *Copy of exhibit marked "J," shown by counsel for def't.—J. N. Dawson, N. P.*

Dollars, 2,000.

Received, Cincinnati, March 4th, 1867, of J. M. Wade and Fred. Wetmore, executors of the estate of Cha's Davenport, two thousand dollars, on account of myself and as guardian of my children.

EURETTA E. DAVENPORT.

[U. S. I. & R. stamp.]

Copy of exhibit marked "K."

Fourth National Bank in acc't with Euretta E. Davenport, Cr.

1871.		Dr.	
July	5th.	5-20 bonds & prem.	11,000 00
Nov.	1.	Simon's int.	1,000 00
Aug.	29.	Rent, J. F. Follett	250 00
1872.			
Jan'y	13th.	Rent, J. F. Follett	500 00
M'rch	14th.	" do	200 00
Ap'l	6th.	" do	146 25
May.		" do	266 66
June	1st.	" do	137 09
Nov.	5th.	Simon's int.	500 00
"		Macready's rent	1,000 00
Forward			15,000 00

1871.		Cr.	
	May 29th.	Overdraft	6,389 97
146	May 25th.		19 25
	" 30th.		25 00
	" 31st.		17 00
June	1st.		785 35

June	2d.		81 10
"	3d.		9 97
"	6th.		212 50
"	8th.		46 90
"	13th.		21 00
"	14th.		100 00
"	15th.		20 00
"	16th.		120 99
"	17th.		86 25
"	19th.		530 15
"	20th.		196 40
"	26th.		100 00
July	1st.	Board bill	64 30
"	"	Gold for expenses, 50.31 / Carriage to steamer, 5	55 31
		Forward.	
1871.		Bro't over	8,881 44
Aug'st	1.	Circular letter	280 65
"	10th.		280 24
"	18.		616 91
Oct.	3d.		511 49
Nov.	20.		441 70
Dec'r	18.		438 83
		Dec'r 30	108 06
147, 148			
1872.			
Jan'y	6th.		109 19
"	12.	Tax on house	102 43
"	17.		217 34
"	23.		109 82
M'rch	26.	Tax on furuiture	41 56
April	5.		219 33
"	11.		109 93
	May	6th.	619 39
149		16	227 96
		24	285 09
Forward			13,601 36
Bro't over			13,601 36
June	1		113 94
	12		286 62
	24		572 05
July	18		284 71
	22		285 99
	31		1,775 03
			14 25
Sept.	18		905 83
	"		111 54
	25		112 49
Oct.	30		112 40
Nov.	20		222 96
Jan'y	20.	Tax on house	189 91
July	1.	Building stable	1,027 50
	"	Laying gas and water pipe to S	150
Aug.	14.	Duncan, S. & Co	341 65
	21.	"	113 48

Forward	20,221	71
Bro't over	20,221	71
Sept. 14. Duncan, S. & Co.	326	75
Oct. 1. "	1,017	32
Int. on past due note held by B. F. Slone	399	99
Paid to Barrett	571	50
	22,547	28
Balance short	7,547	28
150 D'r bro't over	15,000	
Balance	7,547	28
	22,547	28
Deposited by and due to A. W. Richey	7,547	28

151 *Defendant's testimony.*

Deposition of Samuel B. Keys, witness, taken before me, Daniel Henderson, a notary public, within and for the county of Hamilton and State of Ohio, on Tuesday the 25th day of May, A. D. 1875, between the hours of 8 o'clock a. m. and six o'clock p. m. at the office of Collins & Herren, No. 148 Walnut street, Cincinnati, Hamilton Co., Ohio, pursuant to the annexed notice, to be read in evidence on behalf of the defendant in the said action.

Present, Hon. John F. Follett for plaintiff, and Isaac C. Collins in behalf of defendant.

SAMUEL B. KEYS, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposes and says:

Question. State your age, residence, and occupation, and what
152 was your occupation from 1865 to 1871, inclusive?

Answer. I am fifty-one years of age; reside in the city of Cincinnati; am by occupation a stock-broker, and during the years mentioned was engaged in brokerage and a general stock business in Cincinnati, doing business as Samuel B. Keys & Co. Third s't, Cincinnati, buying & selling local stocks and securities as well as all the stocks and securities dealt in at the New York Stock Exchange. Our business with New York was generally done by telegraph; if done by letter, it was on special orders.

Question 2d. State how and by whom your business in New York was transacted in making purchases and sales.

Answer. Our business was principally transacted by Mess'rs Souther & Co. of No. 53, William street, but we also had an account with H. H. Holboter of No. 28 New s't, N. Y., and Lockwood & Co. of 94 Broadway, N. Y., during a part of the time. We received securities in Cincinnati for remittance to New York for sale, and sold the same by telegraph, giving proceeds to the parties either in currency in Cincinnati or by check on New York, as they preferred. We also bought and sold gold and government bonds and such other securities as were
153 quoted on the New York Stock Exchange on a margin according to the rules of the New York Stock Exchange.

Question 3. State what was the standing and responsibility of the firm of Souther & Co., bankers, No. 53 Williams street, in 1871?

Answer. Their standing was among that of "No. 1" bankers, and their responsibility unquestioned, having a very large business and a

working capital of over half a million of dollars. The actual worth of the partners during the year 1871, including that capital, was about a million of dollars.

Question 4. State whether you were acquainted with Robert W. Ritchie, in 1871; if so, how long had you been acquainted with him, what position did he occupy, and what was his standing and character as a business man in Cincinnati?

Answer. I was acquainted with him in 1871; my acquaintance began in 1867, by his opening an account with my firm; from that time down to the first day of July, 1871, he was for a portion of the time a
154 partner in the banking-house of E. Kinney & Co., of this city, and from the early part of 1869 to July 1st, 1871, he was the cashier of the Fourth National Bank of Cincinnati; after that period, for about one year, he was national bank examiner for the State of Ohio. His character was that of a high-toned and honorable banker.

Question 5. State whether, in 1871 or prior thereto, your firm had any business with M'r's E. E. Davenport; and, if yea, of what nature, and give dates and amounts.

Answer. We did have business with M'r's Davenport, through R. W. Richey. On the 29th day of April, 1869, R. W. Richey brought to our firm a certificate of Western Union Telegraph stock, for (390) three hundred and ninety shares of one hundred dollars each, being numbered 15361, in the name of Euretta E. Davenport, with instructions to remit it to New York for sale for her account. We so remitted and sold the same, viz, (300) three hundred shares at (43⅛) forty-three and one-eighth, and ninety (90) shares at forty-three (43). The proceeds of which, amounting to ($16,729.05) sixteen thousand seven hundred and twenty-nine $\frac{05}{100}$ dollars, we paid to M'r's Davenport, by our check to
155 her order, May 1st, following. On the 10th day of June we bought five hundred shares of the same stock for her at forty (40) cents, on a margin, deposited by R. W. Richey, of four thousand dollars. July the 2d she paid the balance due and ordered the stock out from New York, which was delivered to her August 2d, in four certificates, in her name, of one hundred shares each, being numbers 24439 to 24442 inclusive. May 15th, 1870, Richey (R. W.) brought us the same certificates to be sold in New York for her account, which were sold on the 4th day of June, at 31½ cents. On June 7th, 1870, we paid R. W. Richey, for her account, by a draft on Souther & Co., No. 675, ten thousand dollars.

Question 6. In selling the five certificates for her that you have named above, state how the transfer was effected and witnessed, if you can.

Answer. I have never seen those certificates since, but my recollection is that this power of attorney for the transfer was signed by Euretta E. Davenport and witnessed by R. W. Richey.

156 Question 7. State where she was residing at the time, and whether you ever heard any objection from her to the transaction, or had not received the proceeds of the sale.

Answer. I understood that she was residing in Cincinnati, but I never saw her myself until after the first of January, 1873, nor did I ever hear of any objections that she had made to the sales at any time. I never heard her state that she hadn't received the proceeds of the sales, unless it was during the taking of her deposition in this case.

Question 8. State who attended to the business of M'r's Davenport, in Cincinnati, so far as your knowledge goes.

Answer. Her brother, R. W. Richey.

Question 9. State now all that you know in regard to the sale and

transfer of the certificate of 390 shares of Western Union Telegraph stock standing in the name of Henry Wade Davenport, and sold thro' your house in February, 1871.

Answer. On the 23d February, 1871, R. W. Richey brought to us a certificate of Western Union Telegraph stock, No. 15362, for (390) three hundred & ninety shares, in the name of Henry W. Davenport.
157 The power of attorney attached to the certificate was signed Henry Wade Davenport and witness' by R. W. Richey. He instructed us to remit it to New York for sale, and open an account with R. W. Richey, "special," for that stock and proceeds. We remitted the stock that day to Souther & Co., N. Y., who sold it, according to our instructions, at 50 cents on the dollar. On the 27th day of February we paid R. W. Richey, in draft on Souther & Co., No. 900, thirteen ($13,000) thousand dollars, leaving a balance standing to the credit of R. W. Richey, special, of $5,937.10. On March the 31st that balance was tranferred to the credit of R. W. Richey—general account—and his special account closed.

Question 10. Had you any knowledge or suspicion at the time that certificate was brought to you by M'r Richey, and you sent it to New York for sale, that Henry Wade Davenport was a minor, or that the signature to the power of attorney purporting to be his was not genuine?

Answer. Not the slightest—I implicit confidence in the integrity of M'r Richey. He represented at the time that his sister and her
158 children were without income sufficient to support them without dividends from the Western Union Telegraph Co., and that they had been advised and had determined to sell their stock; that Henry Wade Davenport was of age and either had gone or was about to go to Europe, and that his sister would be of age in a few months, when she proposed also to sell her stock, and then that she and her mother would join the son in Europe.

Question 11. State what interest, if any, you had or took in the transaction?

Answer. I had no interest whatever, excepting as a broker, receiving the usual commission of a quarter per cent. & the telegrapho, that is the costs of the telegraphing.

Question 12. State then what you know of a subsequent sale in June of the same year of 390 shares of the same stock, standing in the name of Catherine Josephine Davenport?

Answer. On the 31st day of May, 1871, R. W. Richey brought to us twelve thousand ($12,000) dollars of United States bonds, being eight thousand dollars of the series of 1862, and four thousand dollars
159 of the series of 1864, and asked us to make him or obtain for him a loan on the same for fifteen days, saying that his sister was about making her preparations to go to Europe and that his *neise* would be of age in a few weeks and then they proposed to sell her stock and take up that loan; accordingly we borrowed from the Lafayette Bank of Cincinnati, on these bonds and on his note at fifteen days for twelve thousand dollars, twelve thousand dollars in cash and paid it to him; on the 20th day of June, Richey (R. W.) brought us a certificate for 390 shares Western Telegraph stock, No. 15363, in name of Catherine Josephine Davenport, with instructions to remit it by mail and telegraph, the stock for sale to arrive, so that he could draw the money that day; that his sister and her daughter Catherine were at the Burnet House, expecting to leave that night for New York on their way to Europe and that they wanted the proceeds of the stock to settle their account and to

take up the loan at the Lafayette Bank in order that they might receive their government bonds before they left.

We accordingly remitted the stock that day by mail to Souther & Co., sold it by telegraph "to arrive" at 60⅛ per cent., credited the pro-
160 . ceeds to R. W. Richey, took up the loan in the Lafayette Bank of twelve thousand dollars, charged Richey with the amount so paid to the Lafayette Bank and delivered him the twelve thousand government bonds; afterwards, say July the 18th, we paid him twelve hundred dollars cash, August 15th five thousand dollars; so far as I know, the balance of proceeds of that sale of stock remained to the credit of R. W. Richey in his general account. The amount of money paid Richey by us on account of these certificates was realized by one draft on Souther & Co., which they paid out of sales of this stock.

Question 13. State whether these two certificates last spoken of were sent to New York under any limitations as to price, and how soon they were sold after being transmitted?

Answer. The certificate in the name of Catharine, last described, was sent without any limitation; my recollection is that the certificate in the name of Henry, remitted on the 23d Feb., was limited at fifty and sold on the 27th at that price.

Question 14. State, if you know, the custom in New York by which these shares when sold by Souther & Co. were transferred on the books of the company in New York?

161 Answer. The usual rule with brokers who receive for sale a certificate of stock running over a numbered shares, is to send it to the transfer office of the company and have it transferred into new certificates for smaller amounts in their own names for the convenience of sale and delivery under the rules of the stock exchange. These certificates were sold by Soulter & Co., at the stock-board.

Question 15. In case Soulter & Co. did not sell the whole 390 shares to the same party, which course would be taken in its transfer? That is, supposing it were sold in parcels to different parties?

Answer. If they sold the stock to different parties before the certificate had been transferred to themselves, then they would have the certificates transferred either directly to the parties that had purchased, if they confidence in them, or therein transferred to themselves in suitableamounts to deliver to the parties with their assignment on payment of the money.

Question 16. Would the transfer of the shares into the name of Soulter & Co., on the books, indicate that Soulter & Co., became the purchasers?

Answer. Not at all.

162 Cross-examined by Col. Follett, of counsel for plaintiff:

Question 1. Were not all the moneys received by you or the firm of S. B. Keys & Co., as proceeds of the sale of certificate 15362 in the name of Henry W. Davenport, and certificate No. 15363 in the name of Catherine Josephine Davenport, paid to R. W. Richey?

Answer. Yes, sir.

Question 2. Did you or not know, at the time certificate 15362 was sold, that Henry W. Davenport was in Europe?

Answer. All I know on that subject was what I have before stated, that M'r Richey told me that Henry W. Davenport either had gone or was about to go to Europe.

SAMUEL B. KEYS.

163 Deposition of witnesses taken in a cause pending in the circuit court of the United States for the southern district of Ohio, wherein Katharine J. Davenport, by her guardian, Euretta E. Davenport, is plaintiff and the Western Union Telegraph Company is defendant, and for said defendant in pursuance of the notice hereto attached.

Present, Isaac C. Collins, esq., on behalf of defendant, and Henry L Burnett, esq., on behalf of plaintiff.

ROBERT W. RICHEY, of full age, being first duly sworn, testified as follows:

Q. Please state your age, present residence, and occupation.

A. My age is 38 years; residence, New York City; and occupation, paymaster of the Erie Railway Co.; my district extending over a circuit lying 200 miles west of New York City.

Q. State what your occupation has been, at various times since January, 1865, and also your residence during the same time.

A. From January 1st, 1865, to Feb'y 1st, 1866, I was a member of the firm of E Kinney & Co., bankers, in Cincinnati. From Feb'y, 1866, to July, 1871, I was teller and cashier of the 4th Nat'n'l B'nk Cin'ti.

164 Of this period I was teller during the first two years, and the rest of the time cashier. From July, 1871, to March, 1872, I was examiner of the national banks of the State of Ohio, appointed by the Secretary of the Treasury. From March, 1872, to January, 1873, I had no occupation. I was appointed to my present position as paymaster on the Erie Railway on January 28th, 1873. My residence with my family was in Cincinnati until January 28th, 1873, and since that time it has been in New York City.

Q. Were you acquainted with the late Charles Davenport, of Cincinnati? and, if yea, state what relation he was to you, and the time of his death.

A. I have been intimately acquainted with him for a number of years. He married my sister. He died in March, 1865.

Q. Please state where his widow, your sister, lived after his death; and whether near or far from your place of business.

A. From the time of her husband's death until August, 1865, she lived at Avondale, in the house in which her husband died. That was about four miles distant from my place of business. She then moved into the city of Cincinnati; and boarded at various places; part of the

165 time at the Burnett House, and part of the time at private boarding-houses; being absent during the summer months at various watering-places. This continued until October, 1868, when she bought a residence at East Walnut Hills, which was situated about three miles from my place of business. She resided at this place until the first of June, 1871, when she rented her house to M'r I. F. Follett, and went to Europe to live. She remained abroad until the early part of the year 1873, when she returned to Cincinnati.

Q. State where her two children, Henry W. and Katharine J., lived during all that time after their father's death.

A. Henry W. Davenport resided with his mother until he went to Europe, except when he was at boarding school somewhere at the East, from which place he kept returning home. He went to Europe about a year before his mother did. Her object in sending him to Europe was to place him in a school where the discipline would be stricter than in

the schools in this country. He remained in Europe until his mother returned, and a short time afterwards he came home. Katie was with her mother all the time until after her return from Europe.

166 Q. Who assisted or aided M'r's Davenport in business matters after her husband's death?

A. The executors of her husband's will, I. H. Wade and Frederic Whitmore, for about a year. It is a pretty hard question to answer as to who her advisers were.

Q. Where did she keep her bank account after her husband's death?

A. From the time of her husband's death until February, 1866, she kept her account with E. Kinney & Co., bankers. And from February, 1866, until July, 1871, she kept her account with the Fourth National Bank.

Q. Her account was transferred from E. Kinney & Co. to the Fourth National Bank about the same time that you went to the Fourth National?

A. Yes, sir.

Q. Please state what property was left to M'r's Davenport by her husband, including that left to the children; also, give as nearly as you can the dates of the sale of the same, and the amounts produced thereby, giving the latter so it can be put down in tabular form.

A. The house in Avondale, commonly called the homestead.

167 That was all the real estate. Then there were 390 shares of Western Union Telegraph stocks to herself and 390 shares to each of her children. There was also some Russian extension stock. I don't know the number of shares. It was a stock in some way connected with the Western Union Telegraph Company. There was no other property, except some personal property contained in and about the homestead, the greater part of which she still retains. There was also a note for $5,000 which was my note, and which had been reduced to about $3,500 at the time of M'r Davenport's death. Since his death $500 have been paid, I think; but I am not certain as to this. This was all the property after the debts were paid. The property above referred to was sold as follows:

1865.	Aug. 9, homestead sold for	$40,000	
1867.	Jan'y 10, Russian extension stock	7,098	
1869.	May 1, 390 shares W. U. (being the certificate of M'r's D's stock)	16,729	05
1871.	Feb. 23, 390 shares of H. W. D	18,937	10
1871.	June 20, 390 " " K. J. D	23,348	75

As to the sale of the two certificates lastly referred to, I may be

168 mistaken as to the precise amounts realized; if so, they can be corrected by reference to the books of S. B. Keyes, through whom the stocks were sold.

Q. State now what productive capital, if any, M'r's Davenport and her children had during the years you have referred to.

A. Her only productive capital was the sum of $40,000 received from the sale of the homestead, of which amount she invested $15,000 in government bonds, and $15,000 on bond and mortgage to G. Simon at 10 per cent. interest. The excess of interest over six per cent. was put in separate notes of $300, each payable every six months, and the six per cent. was also payable semi-annually, but no separate notes given for it. This loan was not made until after M'r Glen had made his final payment on the homestead. Of the first payment made by M'r Glen,

which was $25,000, I think $5,000 were reserved, or temporarily invested to pay for a monument. Of this $25,000, I think only $15,000 was invested in government bonds.

Q. When M'r's Davenport purchased the house on East Walnut
169 Hills in October, 1868, how much, if any, did that reduce her productive investments?

A. The house was purchased for $22,000. Of this sum, $6,000 was paid in cash and the balance secured by notes at one, two, and three years, for $5,333.33⅓ each. The $6,000 cash was raised by the sale of some securities, I suppose bonds. I see that, by her account with the Fourth National Bank, she had but $810.62 to her credit at that time. I find three credits or deposits in her account within a few days of her first payment on the house, which I presume are from the sale of bonds, but the deposit-tickets, if they are preserved, will probably show.

Q. State whether either of the mortgage notes which she made on the house was afterwards paid; and, if so, which, and out of what funds.

A. I do not find any payment at one year after the purchase, but I see a check after about eighteen months which I think must have been for the first note. The check was paid June 7, 1870, and the amount is $5,906.60. This check appears to have been paid from the proceeds of a sale of Western Union Telegraph stock. The account seems to show that the second note was paid by a check of April 18, 1871, for $5,521.60.

Just previous, on the day previous, is a deposit of $5,000, which
170 was money paid by G. Simon, in part payment of his loan. But whether those two checks paid the notes or not I am not certain, but I am sure the notes were paid through the Fourth National Bank. The third note had not been paid when last I heard of it. I paid some interest on it before I left Cincinnati, which appears in the account as paid to B. T. Stone.

Q. Now please examine the accounts now shown you of M'r's Davenport with E. Kinney & Co.; also the account with the Fourth National Bank, marked by the commissioner with his name and this date, respectively, as A and B; and state who generally made the deposits therein credited, or otherwise caused such credits to be entered.

A. All the credits and deposits, with very few exceptions, were made by me personally. I think very likely the credit of $25,000, proceeds of the sale of the homestead, was from a check handed in by M'r's Davenport. There are a few other items of credit in the account with E. Kinney & Co. of which I have no recollection. All the deposits at the Fourth National Bank were made by me personally, either by coupons from her bonds, interest from M'r Simon, or call-loan checks to make her
171 accounts good on the books. She rarely, if ever, came to the bank with money to deposit. I have no recollection of any instance when she did so.

Q. Please state now as nearly as you can, the items of credit resulting from the collection of coupons, giving dates and amounts in tabular form.

A. I have no means of telling from this account the credits that are made from the sale of coupons upon the bonds, but think the deposit-tickets will show. The following are the credits to the best of my recollection:

1866.	March	2.	5-20 coupons	$203 08
"	"	17.	.....	509 20
"	July	26.	.....	358 00

1866.	Nov.	8.	.....	394 25
1867.	Jan'y	30.	.....	358 00
"	June	23.	.....	237 25
"	July	16.	.....	237 25
1868.	June	23.	.....	546 00

Q. State as nearly as you can from the accounts which of the credits result from the collection of interest from Simon.

A. As nearly as I can tell without reference to the deposit-tickets, the following are the amounts of interest collected from Simon and credited to M'r's Davenport:

172	1867.	March 30	.....	300 00
	"	April 15	.....	450 00
	"	October 2	.....	750 00
	1868.	April 4	.....	750 00
	"	Sept. 30	.....	300 00
	"	Oct. 30	.....	450 00
	1869.	April 8	.....	300 00
	"	Dec. 9	.....	1,000 00
	1871.	Nov. 1	.....	1,000 00
	1872.	Nov. 5	.....	500 0
				$5,800 00

Q. If M'r's Davenport had at any time any other source of income than that already referred to, please to state what it was, and the amounts as nearly as you can.

A. She had no other, except rents from her Walnut Hills residence, during her absence in Europe, which were as follows:

1871.	Aug.	29.	Rent, I. F. Follett		.....	250 00
1872.	Jan'y	13.	"	"	.....	500 00
"	March	14.	"	"	.....	200 00
"	April	6.	"	"	.....	146 25
"	May		"	"	.....	266 66
"	June	1.	"	"	.....	137 09
						$1,500 00
"	Nov.	1.	Rent, R. McCready		.....	1,000 00
						$2,500 00

173 Q. What unusual expenses, if any, did M'r's Davenport have connected with the purchase of the Walnut Hills residence?

A. They consisted in repairs to the house, in grading the grounds, making new walks, and preparing and painting the house. And at the time when M'r McCready rented the house, the building of a barn. All the expenses, except the building of the barn, were made by M'r's Davenport shortly after she got possession of the property and before she went to Europe. I had the barn built during her absence, as I found it was impossible to rent the house without it.

Q. State as nearly as you can the amount that she expended on the premises in repairs and improvements shortly after she purchased them.

A. I think about three thousand dollars.

Q. What income, if any, had Henry and Katharine, for their maintainance and education?

A. To the best of my knowledge no income whatever.

Q. When Henry went abroad in 1870 what is your recollection as to how his expenses were paid?

174 A. The money to pay his schooling and his outfit and passage to Europe was paid by M'r's Davenport by checks on the Fourth National Bank. I think his schooling was required to be paid one year in advance.

Q. State whether M'r's Davenport's account was or was not frequently overdrawn.

A. It was quite frequently overdrawn.

Q. How did she pay her current expenses for herself and family?

A. Principally by checks on the bank, drawn against her account.

Q. Did you keep any account with her of receipts and disbursements, or render to her accounts of the same from time to time?

A. I kept no private account with her, prefer'ing to have all her receipts & disbursements shown on the books of the bank, and in her account with the bank. The statements were made and rendered to her at any time when her pass-book was ballanced, which could be done at any time she required it. I generally wrote in her pass-book before it was handed to her, in pencil, what her credits were for, and as to the debits she would know them by the checks.

Q. Have you in your possession any of her pass-books which she had with the bank?

A. No, I have not. Her pass-books were handed to her when her account was ballanced and her checks returned.

175 Q. Do you know whether she kept at home, independent of her pass-book, any account of credits and debits with the bank, as by memorandum on the margin of her check-book or otherwise?

A. She had check-books, but whether she kept memoranda of her checks given I can't state.

Q. State whether a notice would be sent to her of her account being overdrawn whenever such over-drafts occurred.

A. The notices of her overdrafts were given to me, as I transacted all her business, and I was expected to make her overdrafts good.

Q. Were the other officers of the bank willing that her account should appear continuously, from day to day, overdrawn?

A. The officers objected to overdrawn accounts on the books of the bank, as they had to be reported as overdrafts in their public statements.

Q. The notice being sent to you, did you send them to her, and require her to come and make the account good; if not, how was it made good?

176 A. The notices were not sent to her, but were made good by me by making her call-loan checks, and placing them to the credit of her account.

Q. And if the account were then again overdrawn before any deposit was made, what would be done?

A. I would continue to make call-loan checks until a deposit was made that would meet them, or until funds were realized from the sale of some securities.

Q. When funds were so realized would they be put to her credit and then her check drawn against them to take up the call-loans; how does the bank account appear in that regard?

A. It does not appear to have been done; in all cases at least. I am sure it was not done towards the last of this account, but I never noticed

or thought of that until I examined a transcript of the account within a day or two past, when my attention was called to it. I do not now see any checks which appear to have been given to take up any of these call-loans.

Q. Please to examine the account, on the credit side, and give as nearly as you can, without reference to the deposit-tickets, the
177 credits which appear to be produced by call-loans.

A. In looking over the account I find the following amounts, which, I think, were call-loans, made for the purpose of keeping her account good, as I knew of no sourse of revenue from which those credits could have been derived, unless they were call-loans, and they are as follows:

1866. Feb.	7	$500 00
1867. "	16	500 00
" M'rch	5	2,000 00
" May	2	400 00
" "	23	100 00
1868. Jan'y	10	600 00
" May	18	500 00
" June	10	500 00
" Dec.	31	500 00
1869. Aug.	2	1,500 00
" Oct.	11	1,100 00
1870. Apr'l	5	500 00
" May	9	600 00
" June	1	500 00
" July	25	1,500 00
" Oct.	12	1,000 00
" Nov.	30	1,500 00
1871. Jan'y	3	500 00
" "	30	1,000 00
	Carried over	$15,300 00
178	Brought over	15,300 00
1871. May	15	500 00
" "	29	500 00
" June	15	1,200 00
" July	18	964 33
	Making a total of	$18,464 33

As to some of these items I may be mistaken. I think I could tell better if I saw the deposit-tickets. As to all these items two facts concur which lead me to believe they were call-loans. These are, that a part of them were given to make her overdrafts good, and to provide funds for her to draw against; and that she had no income, so far as I know, from which such deposits could have been derived.

Q. State whether you did, or not, make all her overdrafts and call-loan checks good to the Fourth National Bank.

A. All overdrafts and call-loans were made good to the Fourth National Bank by me. I think her account there shows a very small balance in her favor.

179 Q. State whether you at any time said or wrote to your sister anything in regard to the amount she was spending, and the limited character of her resources.

A. I wrote to her once while she was in Europe, telling her that she was spending a great deal of money.

Q. State whether you made out a pass-book to be given to M'r's Davenport after her return from Europe, bringing down her account of receipts and disbursements to October, 1873, as you understood it.

A. The pass-book was made by me more as a statement of her account as I understood it, than as a pass-book in the proper sense, showing her receipts and disbursements during her absence in Europe, and including a few items incur'ed just as she was leaving.

Q. State whether the items charged to her in that account are actual payments or disbursements made by you.

A. Her actual disbursements, made by me for her account, and for which she received proper vouchers for with the book.

Q. State whether in that account, or in any other, so far as you
180 now know, she is charged with the amounts paid by you to make good her call-loans at the Fourth National Bank.

A. All I can say in reply to that is, I cannot trace any amounts in her accounts large enough to cover the call-loan checks; and as to all the checks that are large enough, they appear to have been drawn for other and specific purposes.

Q. State, as nearly as you know, what monies she took with her to Europe when she left, and in what way her expenses were paid, or monies remitted to her while she was absent.

A. The only money I knew that she took with her to Europe was $50,00. Her expenses in Europe were paid by circular letters drawn from Duncan, Sherman & Company.

Q. What arrangements did you make with Duncan, Sherman & Co. in regard to furnishing her with circular letters when she left?

A. I expected to have to pay for the circular letters to the extent of five hundred pounds (£500), but found that by guaranteeing the payment to Duncan, Sherman & Co., and supposing that gold would
181 decline, I made arrangements to have them paid at the Fourth National Bank in Cincinnati, where they were paid & charged in her account, and entered in her pass-book. These amounts were paid in the bank by me.

Q. What amount of government bonds, if any, were on hand, belonging to M'r's Davenport, in the summer of 1871, when she left for Europe?

A. Ten thousand dollars.

Q. State as nearly as you can what had become of the other $5,000 which she originally held.

A. On March 31st, 1866, $2,000 of bonds were sold for $2,047.40. April 3rd, 1866, $2,000 were sold for $2,047.35, & July 9th, 1866, $1,000 were sold for $1,035. I make these statements from an examination of the account, and think I am correct.

Q. What do you know, if anything, as to an investment by M'r's Davenport in Western Union Telegraph stock before you had charge of her affairs?

A. I heard that she had bought some at 75, but when, what amount, or what became of it, I know nothing.

Q. After selling the certificate, standing in her name, May 1st,
182 1869, 390 shares, did she buy 400 other shares?

A. On May 1st, 1869, she sold 390 shares Western Union Telegraph stock, to wit: 90 shares at 43, and 300 at 43¼; on June 10th, 1869, she bought 400 shares at 40.

Q. When were those 400 shares sold, and at what price?

A. They were sold June 7th, 1870, at 31½, making a loss, including commissions, of $3,600, not including interest.

Q. State whether any part of the proceeds of the certificate sold February 23rd, 1871, in name of Henry W. Davenport, went to the credit of M'r's Davenport in her bank account.

A. I see by her statement that she was credited on that day with $3,000, which I think was a part of the proceeds of that sale.

Q. By whom were these various sales of bonds and stocks, as well as he purchase of the Western Union stock, made—that is, through what brokers?

A. The telegraph stock was bought and sold through S. B. Keyes & Co.

Q. Who attended to these purchases and sales for her?

183 A. The purchase and sale of bonds was done through me; of the stocks also.

Q. Do you know of her purchasing stocks at any other time than that referred to when the 400 shares were bought?

A. I have no knowledge of any.

Q. Did she instruct you at any time, other than that in reference to the 400 shares, to speculate in stocks on her account and with her means?

A. She did not; and I never did.

Q. State whether you were understood to be her agent and attorney in fact to transact her business in Cincinnati, and recognized as such by the bankers and brokers.

A. Although I had no written power of attorney, it was well under stood by those who transacted business with her that I attended to al her business.

Q. State whether at any time you knew of her drawing a check for the purpose of making an investment of less sum than one thousand dollars.

A. I don't know of any instance—I don't think she did.

Q. Did you ever know of her buying one or two $500 bonds at a time?

184 A. I don't remember of her doing it, but she may have done so. I think she bought the $15,000 of bonds in sums of not less than $2,000 at one time, and at an interval of a few days.

Q. Did you know of her lending any money at any time?

A. I think on May 3rd, 1869, she loaned ten thousand dollars, and it was paid back July 2nd, 1869, with $166.66 interest, making $10,166.66.

Q. What funds does she appear to have had on hand at that time?

A. Funds derived from the sale of her 390 shares of telegraph stock, sold May the 1st, 1869.

Q. Who attended to that transaction for her, and to whom was the loan made; that is, the $10,000 loan above referred to?

A. I attended to it. The loan was made to Brashears, McLaughlin & Co.

Q. There were no loans, were there, of sums less than $1,000 that you know of?

A. No, sir.

Q. Look at the item of credit in her account, on June 7th, 1870, of $10,000, and state where that money came from.

185 A. The proceeds of the telegraph stock sold that day was $12.500, of which $10,000 was placed to her credit; the ballance, amounting to $2,500, I am now unable to state what became of it.

Q. Have you had any settlement with M'r's Davenport of the accounts between you and her?

A. No, I have not had any.

Q. Can you state whether on a full settlement she would be indebted to you, or you to her?

A. I think I would be indebted to her.

Q. Is it not your impression now, or can you state any reason why her account with you should not be debited with about the amount of the call loans which you paid for her at the bank in addition to the items with which it is now debited?

A. Her account should be debited with that amount, unless it has been already debited by her checks, but in that case her account should be credited with further amounts from sales of telegraph stock, in the names of Henry W. Davenport and Katharine J. Davenport, deducting

186 $3,000 which is credited in account on February 27th, 1871, which was part of the proceeds of H. W. Davenport's stock.

Q. State as nearly as you can what were the average annual expenses of M'r's Davenport and the children, from 1865 to 1873, inclusive.

A. That will have to found out from an examination of her accounts. I cannot form an idea.

Q. What way could that be ascertained from the accounts, or approximated?

A. By taking her checks that were given for actual expenses, and footing them up.

R. W. RICHEY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 23rd day of March, 1875, and the further examination adjourned to March 24th, 1875, at 10.30 a. m.

H. M. HAIGH,
Commissioner, &c.

MARCH 24TH, 1875.

Parties met pursuant to adjournment, and the witness, R. W. Ritchey, was cross-examined by Henry L. Burnett, esq., as follows:

187 Q. You refer in your examination-in-chief to a sale of 390 shares of Western Union Telegraph stock February 23rd, 1871, and of the same amount June 20th, 1871; they are marked in your answers as shares of H. W. D. and K. J. D.; to whom do these initials refer?

A. H. W. D. refers to Henry Wade Davenport, and K. J. D. to Katharine Josephine Davenport. They were the minor children of M'r's Euretta E. Davenport.

Q. What was Henry's age at the time to which you refer?

A. He was about seventeen years of age at that time; that is, he was between sixteen and seventeen.

Q. And what was Katharine's age at that time?

A. I think she was about two years younger.

Q. At the time of that sale where was Henry?

A. At school in Switzerland.

Q. And Katharine Davenport, where was she?

A. With her mother in the neighborhood of Cincinnati.

188 Q. Had these children any legal guardians, to your knowledge and, if so, who were they?

A. Their mother was named guardian by the will.

Q. These shares, belonging to these children, were in how many certificates?

A. Two certificates, 390 shares each.

Q. Whose names appeared upon the face of those certificates as owners?

A. Henry Wade Davenport and Katharine Josephine Davenport.

Q. Were those shares of stock of the character that passed by delivery, or did they require to be endorsed by the owners when transfer'ed?

A. They required to be endorsed by the owners.

Q. Were these two certificates, to which you have refer'ed, owned by these children at the time of their father's death, or how did they become possessed of them, if you know?

A. I have heard that those shares were left to them under the will of their father.

Q. Were these certificates in the ordinary and usual form of the certificates of the stock issued by the Western Union Telegraph Company?

189 A. They were the ordinary certificates and were in the ordinary and usual form.

Q. At the time of the sale of these two certificates did you hold any power of attorney from these children, or power or authority of any kind from them or either of them, from their guardian or the proper court, to transfer these certificates or to sign the names of these children to these certificates?

A. I never did.

Q. Did you, at the time of the transfer, sign or endorse the name of each one of these children on their respective certificates?

A. I did.

Q. Did any person act as witness to that signature, and if so, whom?

A. My name is signed as witness.

Q. What was the name endorsed on each certificate? Give it as nearly as you can remember.

A. The name signed to the blank transfer of the certificate of Henry W. Davenport was "Henry Wade Davenport," and the name signed to the blank transfer of the certificate of Katharine J. Davenport was "Katharine Josephine Davenport."

190 Q. Where were you at the time when you signed these names to the certificates—where was it done?

A. I was in Cincinnati, and they were signed at the Fourth National Bank.

Q. At the time that you signed the certificate belonging to Henry W. Davenport what did you then do with the certificate?

A. I handed it personally to S. B. Keyes and directed him to have it sold in New York at the market rate.

Q. To whom were the proceeds of that sale credited by Keyes, if you know?

A. The proceeds were paid to me by check payable to my order.

Q. At the time you endorsed the name of Katharine Davenport on her certificate what did you then proceed to do with it?

A. I handed it to M'r Lea in the presence of M'r Keyes—they were standing together—with instructions to sell it in New York, which was done and he accounted to me for the proceeds.

Q. On page blank you say "all deposits at the Fourth National Bank were made by me personally," &c.; do you not recollect the fact

191 that some deposits were made in that bank, the 4th National, to her credit during her absence in Europe?

A. I remember that two deposits were by General Burnett to her credit were on account of interest paid by G. Simon, and one of money received from J. F. Follett, and one or more deposits made to her credit by J. F. Follett on ⅛ of his rent.

Q. In the list which you have given on pages of call loans, amounting to $18,464.33, you don't mean to say, do you, that these sums were permitted to accumulate from February, 1866, to July 18th, 1871, without any payments being made, or credits entered to M'r's Davenport in the mean time?

A. No; they did not accumulate for that length of time, but they were often allowed to run until they amounted to five or six thousand dollars.

Q. How were they paid, and by whom?

A. These call loans were paid by M'r's Davenport, or by her through me from time to time, either by her depositing funds and then checking against them so as to lift these call-loans, or by paying and lifting them directly.

192 Q. You state in your examination-in-chief that you think $3,000 of the money received by you for the sale of the Henry W. Davenport certificate was deposited by you to the credit of M'r's Davenport; have you any distinct recollection about that matter now?

A. I have no recollection of making the deposit, now, but think that I did, from the fact a deposit was made on the day upon which I received the proceeds of the sale of the stock.

Q. Can you now state positively whether any of the proceeds of Henry W. Davenport's certificate were paid over to M'r's Davenport, or deposited to her credit?

A. I can't state it positively, but think part of it was placed to her credit.

Q. And that part that you think was placed to her credit was this $3,000, was it not—no other?

A. It was.

Q. None of the rest or remainder of the proceeds was ever paid over to her, or part to her credit, to your knowledge?

A. No; not to my knowledge.

193 Q. If it could be shown that this $3,000 had come from some other source, then none of the proceeds of this certificate, so far as you know, or now remember, would have been paid to M'r's Davenport?

A. I don't think that could be so.

Q. At the time M'r's Davenport started to Europe in the summer of 1871, you have said that she then had and owned $10,000 in government bonds; do you know what become of those bonds during her absence?

A. They were sold in various sums at various times and credited to her in my final statement furnished to her.

Q. M'r's Davenport was absent about a year and a half, was she not?

A. Yes; I think about twenty months.

Q. In that time she had to draw upon, as resources, the $11,000 realized from the sale of government bonds, the interest paid in by Simon on his note or judgment, and the rent of her Walnut Hills house, did she not?

A. She had.

194 Q. In addition to this when she came home was there not a large amount due Duncan, Shearman & Co. for drafts or circular notes of theirs which had not been met?

A. There was about $2,500 due Duncan, Sherman & Co.
Q. Do you know whether that has ever been paid yet, or not?
A. I do not.

R. W. RICHEY.

Subscribed and sworn to before me this 24th day of March, 1875.

H. M. HAIGH,
Notary Public.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry M. Haigh, a notary public for the county of New York in said State, duly appointed, commissioned, qualified, and sworn, do hereby certify that the above-named Robert W. Richey was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, and that the foregoing depositions by him subscribed were reduced to writing by me (except a few lines on pages 29 and 30 which were written by the said witness), and
195 were subscribed by the said witness in my presence, and were commenced at the time and place in the notice specified, and continued by adjournment from day to day at the same place and between the same hours as in the notice specified. In testimony whereof I have hereunto set my hand and official seal this 24th day of March, A. D. 1875.

[SEAL.]

H. M. HAIGH,
Notary Public City & County of New York.

STATE OF NEW YORK,
City and County of New York, ss:

I, William Walsh, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that H. M. Haigh, before whom the annexed deposition was taken, was at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in
196 said State, and for general purposes; and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 31st day of March, 1875.

[SEAL.]

W'M WALSH, *Clerk.*

Fees $50.00, paid by defendants.

197 *Exhibit A.—H. M. Haigh, Comm'r.*

NEW YORK, *March* 23, 1874.

M'R'S E. E. DAVENPORT.

1866.				
Feb.	7		500	500
	"	50		450
	10	20		430
	19	26 50		403 50
	28	241		162 50
Mar.	2		203 08	365 58
	3	66 02		299 56
	6	30 75		268 81
	10	130		138 81
	17		509 20	648 01

Exhibit A.—H. M. Haigh, Comm'r—Continued.

Mar.	17		290		358 01
	20		51		307 01
	24		20		287 01
	28			1,330 03	1,617 04
	"		500		1,117 04
	29			511 65	1,628 69
	30		100		1,528 69
	31			2,047 40	3,576 09
		Balance	3,576 09		
			5,101 36	5,101 36	
April	2	Balance		3,576 09	3,576 09
	3			2,047 35	5,623 44
	5		25		5,598 44
	9		36		5,562 44
	12		18 70		5,543 74
	16		50		5,493 74
	25		25		5,468 74
	27		46		5,422 74
	28		232		5,190 74
May	1		40		5,150 74
	2		56		5,094 74
		14	4,504 50		590 24
198	May	16	26		564 24
		25	50		514 24
	26		52 75		461 49
	28		25		436 49
	31		36		400 49
June	6		93 60		306 89
	7		244		62 89
	8		72 60		9 71
	13		44		53 71
	15		23		76 71
	16			273 75	197 04
	18		71 38		125 66
	22		146 13		20 47
	27		125 68		146 15
	30		63		209 15
July	2		105		314 15
	3		177 95		492 15
	5		47 25		539 35
	7		21		560 35
		Balance		560 35	
			6,457 54	6,457 54	
July	9	Balance	560 35		560 35
	"			1,035	474 65
	"		428 50		46 15
	11		220 78		174 63
	12		20 75		195 38
	26			358	162 62
Aug.	9			600	762 62
	15			400	1,162 62
Sept.	6		500		662 62
	12	Glenn		15,907 50	16,570 12
		24	101 41		16,468 71
199	Sept.	26	26		16,442 71
		27	15,520		922 71
	29		32 50		890 21
Oct.	4		247 90		642 31
	8		25		617 31
	10		5 90		611 41
	17		100		511 41
	24		55 13		456 28

Exhibit A.—H. M. Haigh, Comm'r—Continued.

Oct.	27		25			431	28
Nov.	1		36			395	28
	2		240	70		154	58
	3		12	80		141	78
	8				394 25	536	03
	13		89	10		446	93
	27		20			426	93
Dec.	1		30			396	93
	3		253	45		143	48
	10		8	75		134	73
		Balance	134	73			
			18,694	75	18,694 75		
Dec.	11	Balance			134 73	134	73
	19		25			109	73
	22		25			84	73
	28		25			59	73
	29		202			142	27
	31		200			342	27
1867.							
Jan'y	7		71			413	27
	8		74	57		487	84
	"		2			489	84
	10				7,098	6,608	16
	"		7,075	75		467	59
		11	14	45		482	04
200	Jan'y	15	8	50		490	54
		17	13			503	54
	18		15			518	54
	19		132	50		651	04
	25		69	45		720	49
	26		200			920	49
	30				358	562	49
	"		36	25		598	74
Feb.	6		50			648	74
	12				237 25	411	49
	13		38	70		450	19
		Balance			450 19		
			8,278	17	8,278 17		
Feb.	16	Balance	450	19		450	19
	"				500	49	81
	25		210	50		160	69
Mar.	5				2,000	1,839	31
	"		1,000			839	31
	6		27			812	31
	15		274	24		538	07
	16		26	55		511	52
	20		21	50		490	02
	21		700			209	98
	30	Simon			300	90	02
April	15				450	540	02
	"		500			40	02
	22		205	05		165	03
	25		200			365	03
May	2				400	34	97
	8		26			8	97
	13		25			16	03
		14			163 59	147	56
201	May	17	200			52	44
		23 Call loan			100	47	56
	27		29	15		18	41
	30		10			8	41
June	18		55			46	59

Exhibit A.—H. M. Haigh, Comm'r—Continued.

June	22			237 25	190 66
	"		221 75		31 09
July	1		160 32		191 41
	"		28 75		220 16
	12		34 50		254 66
	16			237 25	17 41
	18		50		67 41
	22		15		82 41
	23		282 45		364 86
	24		195 12		559 98
	25		8 95		568 93
	26		35		603 93
	31	New York		2,698	2,094 07
	"		765 10		1,328 97
Aug.	1		7		1,321 97
		Balance	1,321 97		
			7,086 09	7,086 00	
Aug.	5	Balance		1,321 97	1,321 97
	"		300		1,021 97
	14		75 89		946 08
	15		13 30		932 78
	23		188		744 78
	28		26		718 78
	31		15		703 78
Sept.	6		15		688 78
	7		129 19		559 59
		13	25		534 59
202 Sept.		14	50 77		483 82
		21	35		448 82
	23		24 50		424 32
	35		174 12		250 20
	26		56 15		194 05
	28		25		169 05
Oct.	1		12 50		156 55
		Balance	156 55		
			1,321 97	1,321 97	
Oct.	2	Balance		156 55	156 55
	"			750	906 55
	3		53 50		853 05
	7		97 48		755 57
	10		25		730 57
	12		18		712 57
	22		204		508 57
	30		22 86		485 71
Nov.	1		3 25		482 47
	4		26		456 46
	5		100		356 47
	6		6 50		349 96
	9		12		337 96
	"		54		283 96
	13		18 30		265 66
	23		203		62 66
	25		16 15		46 51
Dec.	2		37		9 51
	7		12 85		3 34
	9		137 10		140 44
	13		12		152 44
	20		48 07		200 51
		23	25 00		225 51
203 Dec.		26	324 60		550 11

Exhibit A.—H. M. Haigh, Comm'r—Continued.

	1868.				
Jan.	10		25		575 11
	16			600	24 89
	17			474 50	499 39
	"		50		449 39
	23		197 25		252 14
	24		395 80		143 66
	29		24 50		168 16
	30		18 80		186 96
Feb.	4	N. Y.		3,673 88	3,486 92
	"		1,100		2,386 92
	8		8		2,378 92
	11		1,318 04		1,060 88
	13		33 60		1,027 28
	15		50		977 28
	22		97 80		879 48
	24		221		658 48
	29		119 97		538 51
Mar.	3		77 50		461 01
	4		66 65		394 36
	13			1,300	1,694 36
	"		10		1,684 36
		Balance	1,684 36		
			6,954 93	6,954 93	
Mar.	14	Balance		1,684 36	1,684 36
	"		1,300		384 36
	16		16 50		367 86
	18		15		352 86
	19		38 83		314 03
	21		31 83		282 20
	23		247 50		34 70
	26		187		152 30
204 Mar.	28		233 20		385 50
	31		25		410 50
April	1		42 03		452 53
	2		25		477 53
	4		7 60		485 13
	6			7 50	264 87
	7		10		254 87
	9		9		245 87
	10		47 50		198 37
	11		52 30		146 07
	13		12		134 07
	16		24 50		109 57
	17		25		84 57
	21		185		100 43
	23		28 98		129 41
	24		20		149 41
May	5		66		215 41
	7		5		220 41
	8		71 08		291 49
	13		26		317 49
	14		10		327 49
	18		5		332 49
	22			500	167 51
	25		5 25		162 26
	26		17 50		144 76
	28		10		134 76
June	4		410 45		275 69
	8		5 45		281 14
	9		2 35		283 49
	10			500	216 51
	"		21		195 51
	11		131 97		63 54

Exhibit A.—H. M. Haigh, Comm'r—Continued.

205	June	13	47 65		15 89
		15	18 00		2 11
		18	33 50		35 61
		19	16		51 61
		20	202 76		254 36
		23	40		294 36
		30		546	251 64
	July	15	250		1 64
		18		2,498	2,499 64
		21	20		2,479 64
	Aug.	10		300	2,779 64
		"	336 65		2,442 99
		15	500		1,942 99
		17	100		1,842 99
		29	5		1,837 99
	Sept.	5	10		1,827 99
		8	1,000		827 99
		12	2		825 99
		25	406 99		419
		30		300	719
		"	11 05		707 95
	Oct.	1	41		666 95
		3	199 83		467 12
		Balance	467 12		
			7,078 36	7,078 36	
	Oct.	9 Balance		467 12	467 12
		13	15		452 12
		17	34 50		417 62
		21	30		387 62
		22	10		377 62
		26	12		365 62
		27	5		360 62
206	Oct.	30		450	810 62
	Nov.	2		2,762 50	3,573 12
		2	5		3,568 12
		5	25		3,543 12
		12	3,000		543 12
		14		1,600	2,143 12
		"	3,021 55		878 43
		16		2,700	1,821 57
		"	45		1,776 57
		19	186 92		1,589 65
		21	20		1,569 65
		27	212 50		1,357 15
		28	390 40		966 75
		30	12		954 75
	Dec.	3	28 30		926 45
		5	378		548 45
		7	5		543 45
		8	8 95		534 50
		9	419 51		114 99
		11	25		89 99
		16	38		51 99
		24	79		27 01
		26	25		62 01
		31		500	437 99
	1869.				
	Jan'y	2	10 50		437 49
		4	72 01		365 48
		5	14		351 48
		6	28 95		322 53
		13	60 97		261 56
		14	275		13 44
		16		405	391 56

Exhibit A.—H. M. Haigh, Comm'r—Continued.

		16	718 65		327 09
207	Jan.	20		2,348	2,020 91
		27	25		1,995 91
		29	120 51		1,875 40
	Feb.	2	225		1,650 40
		10	20		1,630 40
		13	93		1,537 40
		16	6		1,531 40
		20	12		1,519 40
		22	115 50		1,409 90
		26	25		1,378 90
		27	13		1,365 90
	Mar.	2	16		1,349 90
		8	36		1,313 90
		12	66 85		1,247 05
		16	52 80		1,194 25
		"	443 90		750 35
		17	279 32		471 03
		19	110 90		360 13
		23	25		335 13
		25	285 14		49 99
		29	8 30		41 69
		31	10		31 69
	April	3	29 75		1 94
		6	25		23 06
		8 Simon		300	276 94
		12	10		266 94
		19	85 12		181 82
		20	52 50		129 32
		22	118 12		11 20
		24	65 50		54 30
		26	10		64 30
		27	27 75		92 05
208	April	28	10		102 05
		29	77 03		179 08
	May	1		16,729 05	16,549 97
		3	10,000		6,549 97
		4	50		6,499 97
		10	39 50		6,460 47
		11	53 40		6,407 07
		18	25		6,382 07
		20	65		6,317 07
		21	80 52		6,236 55
		22	218 72		6,017 83
		26	313 50		5,704 33
		29	32 50		5,671 83
		31	688		4,983 83
	June	4	25		4,958 83
		7	20 65		4,938 18
		8	77 25		4,860 93
		10	4,050		810 93
		11	457 19		353 74
		12	21 50		332 24
		14	12 65		319 59
		15	200		119 59
		19	52		67 59
		22	25		42 59
		26	206 22		163 63
		30	15		178 63
	July	1	161 23		339 86
		2		10,166 66	9,826 80
		"	12,179 04		2,352 24
		Balance		2,352 24	
			40,780 57	40,780 57	

Exhibit A.—H. M. Haigh, Comm'r—Continued.

209	July	3	Balance	2,352 24		2,352 24
		9		967 50		3,319 74
		13		74 53		3,394 27
		17		149 62		3,543 89
		19		25		3,568 89
		20			1,568	2,000 89
		"		33 80		2,034 69
		21			800	1,234 69
		"		22		1,256 69
		22		55		1,311 69
		23		100		1,411 69
	Aug.	2	Call loan		1,500	88 31
		25		13		75 31
	Sept.	6		250		174 69
		11		161		335 69
		16		36 25		371 94
	Oct.	6		182 16		554 10
		"		37 65		591 75
		8		351 56		943 31
		9		37 27		980 58
		11	Call		1,100	119 42
		12		25		94 42
		14		49 50		44 92
		18		25		19 72
		25		12 07		7 85
		28		18		10 15
		29		12 80		22 95
	Nov.	1		25		47 95
		2		36 25		84 20
		5		30 67		114 87
		8		33 60		148 47
			9	35 13		183 60
210	Dec.	4		60 40		244
		"		19 25		263 25
		9	Int. Simon		1,000	736 75
		"		500		236 75
		13		73 25		163 50
		18		19 85		143 65
		20		28		115 65
		22		6		109 65
		23		89 95		19 70
		31		26		6 30
	1870.					
	Jan.	5		20		26 30
		6		14		40 30
		8		25		65 30
		15		20 50		85 80
		17			2,368	2,282 20
		"		30 75		2,251 45
		18		53 60		2,197 85
		20		53 66		2,144 19
		22		25		2,119 19
		24		300		1,819 19
		25		20		1,799 19
		26		759 20		1,039 99
		27		12		1,027 99
	Feb.	1		262 72		765 27
		4		52		713 27
		3		200		513 27
		4		5 45		507 82
		5		215		292 82
		7		94 66		198 16
		8		85		113 16
		9		50		63 16
			11	52 80		10 36
211	Feb.	21		5		5 36

Exhibit A.—H. M. Haigh, Comm'r—Continued.

Feb.	25		138		132 64
	26		78 85		211 49
	28		3 10		214 59
Mar.	3		45		259 59
	8		54		313 59
	9		12 05		325 64
	14		17 75		343 39
	15		23 94		367 33
	18		145 50		512 83
	30		41 88		554 71
April	4		75		629 71
	5			500	129 71
	7		45		174 71
	12		20		194 71
	13		13 70		208 41
	27		4		212 41
	30		45 50		257 91
May	2		25		282 91
	3		126 85		409 76
	6		200		609 76
	7		112 88		722 64
	9	Call loan		600	122 64
	"		99		221 64
	12		69 40		291 04
	"		25		316 04
	14		24 25		340 29
	16		59 33		399 62
	17		116 70		516 32
	18		300		816 32
	20		250		1,066 32
		21	22 25		1,088 57
212	May	25	214 60		1,303 17
		27	7		1,310 17
	28		9 50		1,319 67
	30		25		1,344 67
	31		50		1,394 67
June	1			500	894 67
	3		50		944 67
	4		46 85		991 52
	7			10,000	9,008 48
	"		60		8,948 48
	"		6		8,942 48
	"		5,906 60		3,035 88
	9		20		3,015 88
	10		100		2,915 88
	18		218 99		2,696 89
	21		129 23		2,567 66
	25		13 75		2,553 91
	30		6 75		2,547 16
July	1		150		2,397 16
	2		25		2,372 16
	5		41 50		2,330 66
	6		278 25		2,052 41
	8		102 45		1,949 96
	9		203 15		1,746 81
	11		12 18		1,734 63
	14		2,000		265 37
	18		189 87		455 24
	19		105		560 24
	20		119 75		679 99
	21		510 93		1,190 92
		25	222 10		1,413 02
		"	10		1,423 02
213	Aug.	1		1,500	76 98
	Sept.	2		291 66	368 64
		"	116 51		252 13

Exhibit A.—H. M. Haigh, Comm'r—Continued.

Sept.	21		11			241 13
	22		629 40			388 27
	30		19 15			407 42
Oct.	3			291 66		115 76
	"		20			135 76
	4		170 07			305 83
	"		227 30			533 13
	6		18			551 13
	8		149 91			701 04
	10		214 86			915 90
	12		97 65			1,013 55
	17			1,000		13 55
	22		26 72			40 27
	25		73			113 27
	26		8			121 27
	27		39 35			160 62
	29		345			505 62
	31		100			605 62
Nov.	1			250		355 62
	2		373 33			728 95
	3		118 07			847 02
	9		12 85			859 87
	11		30			889 87
	15		12			901 87
	17		25			926 87
	18		196 56			1,123 43
	19		20 70			1,144 13
	25		11			1,155 13
	28		33 63			1,188 76
214 Nov.	30			1,500		311 24
	"		81 44			229 80
Dec.	5		91 43			138 37
	7		2			136 37
	17		248 15			111 88
	19		11 50			123 38
	24		105 81			229 19
	25		17 67			246 86
	29		69 13			315 99
1871.						
Jan.	3		49 25			365 24
	"		75			440 24
	5			500		59 76
	"		165 13			105 37
	"		55			160 37
	7		45 75			206 12
	9			240		33 88
	10		11 30			22 58
	13		150			127 42
	20		18 35			145 77
	23		164 22			309 99
	24		500			809 99
	25		119 43			929 42
	26		27			956 42
	27		66 90			1,023 32
	30			1,000		23 32
	"		201 51			224 83
	31		5			229 83
Feb.	3		56 25			286 08
	4		37			323 08
	6		69 66			392 74
	10		149 44			542 18
	17		45 34			587 52
215 Feb.	18		4 90			592 42
	20		178 50			770 92
	23		13 60			784 52
	27			3,000		2,215 48

Exhibit A.—H. M. Haigh, Comm'r—Continued.

Feb.	28	19 25		2,196 23
Mar.	6	150		2,046 23
	7	100		1,946 23
	11	160 60		1,785 63
	13	190		1,595 63
	16	32		1,563 63
	20	100		1,463 63
	23	66 85		1,396 78
	24	49 35		1,347 43
	25	144 68		1,202 75
	29	152 29		1,050 46
April	1	14 01		1,036 45
	7	66 25		970 20
	12	82 16		888 04
	13	100		788 04
	14	5		783 04
	15	63 39		719 65
	17	24		695 65
	18		5,000	5,695 65
	"	5,521 60		174 05
	19	17 77		156 28
	20	12 65		143 63
	22	40 20		103 43
	25	100		3 43
May	1	220 43		217
	9	241 65		458 65
	15		500	41 35
	15	147 77		106 42
216 May	19	21 50		127 92
	20	65		192 92
	23	11		203 92
	27	174 30		378 22
	29		500	121 78
	"	19 25		102 53
	30	25		77 53
	31	17		60 53
June	1	699 60		639 07
	2	13		552 07
	3	69 07		721 14
	5	9		730 14
	7	212 50		942 64
	10	46 90		989 54
	15		1,200	210 46
	"	100		110 46
	16	45 24		65 22
	17	192 50		127 28
	19	100		227 28
	20	151 30		378 58
	21	479 20		857 78
	24	6 55		864 33
	27	100		964 33
July	18		964 33	

216½ *Exhibit B.—H. M. Haigh, Com'r.*

NEW YORK, *March* 23, 1874.

M'r's E. E. Davenport, in acc't with E. Kinney & Co.

Date.		Debits.	Credits.	Balance.
1865.				
Sept.	27		1,240	
	28		600	1,840
May	12		2,952 40	4,792 40
	"	50		4,742 40
	13		500	5,242 40
	"	100		5,142 40
	16		342	5,484 40
		500		4,984 40
	30	200		4,784 40
June	23	332 67		4,451 73
	27	88		4,363 73
	29	882 43		3,481 30
July	6	105 60		3,375 70
	10		5 20	3,380 90
	13	36 65		3,344 25
Aug.	9	582 15		2,762 10
	"		25,000	27,762 10
	11	5,144 14		22,617 96
	22	333 34		22,284 62
	14	400		21,884 62
	19	6,750 35		15,134 27
	27	10,158		4,976 27
Sept.	29		2,000	6,976 27
Octo.	2	400		6,576 27
	4	2,009 40		4,566 87
	For'd	28,072 73	32,639 60	
217	Bro't for'd	28,072 73	32,639 60	4,566 87
	1865.			
Octo.	5	2,019 80		2,547 07
Oc.	6	20 40		2,526 67
	26	300		2,226 67
Nov.	2	500		1,726 67
	17	200		1,526 67
	27	275		1,251 67
Dec.	5	260		991 67
	13	100 38		891 29
	29	200		691 29
	1866.			
Jan'y	6	31 30		659 99
	9	100		559 99
	19	50		509 99
	22	313		196 99
	30	43 90		153 09
	31	150		3 09
Feb'y	2	15		11 91
	Balance		11 91	
		32,651 51	32,651 51	
	Debit balance	11 91		11 91

217½ And afterwards, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and seventy-five, an entry was made upon the journal of the court aforesaid in said cause, in the words and figures following, to wit:

Entry Q, p. 631.

This cause came on for hearing on the pleadings and evidence, and the agreement of counsel that, if under the evidence offered it should be deemed material to offer further evidence in regard to the state of the account between said E. E. Davenport, guardian, and R. W. Richie, or concerning the reasonable cost of the education and maintenance of plaintiff by his said guardian, that the cause should be referred to a master to take further evidence and to state an account thereon; and, counsel being heard, the court on consideration finds that the equity of the case is with the plaintiff, and that he cannot be charged in this action with the expense of his maintenance and education. And the court further finds that plaintiff is the owner of 390 shares of stock in the Western Union Telegraph Company, of the par value of one hundred dollars each, and that his certificate therefor, to wit, No. 15362, was on the 23d day of February, A. D. 1871, wrongfully surrendered to said defendant, and by said defendant cancelled, and said
218 shares were by defendant thereupon wrongfully transferred to other parties, and that defendant hath ever since refused to pay to plaintiff the dividends declared on said stock or otherwise to recognize his title thereto. It is therefore considered, adjudged, and decreed that plaintiff recover from defendant, on account of dividends since declared on said stock, the sum of seven hundred and eighty dollars, with interest from August 11th, A. D. 1874, and the sum of seven hundred and eighty dollars, with interest from October 1st, 1874, together with his costs, and execution is awarded therefor. It is further considered, adjudged, and decreed that unless said defendant, within sixty days from the entry of this decree, shall issue and deliver to the clerk of this court, for plaintiff, a certificate for 390 shares of the stock of said company, of the par value of one hundred dollars each, and of the like grade and qualities of the shares so wrongfully transferred, and again place the same on the books of said defendant in the name of the plaintiff, that plaintiff shall recover from defendant the further sum of twenty-nine thousand two hundred and fifty dollars, with interest from June 3d, 1875, and execution is awarded therefor. To all which
219 said defendant, by counsel, excepts, and prays an appeal to the Supreme Court of the United States, which is allowed, and the bond fixed at $50,000.

And afterwards, to wit, on the thirty-first day of August, in the year last aforesaid, came the said Enoch T. Carsen, Richard Smith, Eli C. Baldwin, and J. H. Rhodes, and filed in the clerk's office of said court their appeal bond herein, which said bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

HENRY W. DAVENPORT
against
THE WESTERN UNION TELEGRAPH COMPANY. } 1971.

Know all men by these presents that we, the Western Union Telegraph Company, a corporation duly created, organized, and existing under and by virtue of the laws of the State of New York, Enoch T.

Carsen, Richard Smith, Eli C. Baldwin, and J. H. Rhodes, of Hamilton County, State of Ohio, are held and firmly bound unto Henry W. Davenport, of the city of Cincinnati, in the State of Ohio, in the
220 sum of fifty thousand dollars, lawful money of the United States, to be paid to the said Henry W. Davenport, his executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the 31st day of August, one thousand eight hundred and seventy-five.

Whereas the above-named The Western Union Telegraph Company, hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named The Western Union Telegraph Company shall prosecute its said appeal to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] THE WESTERN UNION TELEGRAPH CO.,
By GEO. T. WILLIAMS, *Attorney in fact.*

221 ENOCH T. CARSEN. [SEAL.]
RICHD. SMITH. [SEAL.]
E. C. BALDWIN. [SEAL.]
J. H. RHODES. [SEAL.]

SOUTHERN DISTRICT OF OHIO, *ss:*

Enoch T. Carsen and Richard Smith, being duly sworn, say each for himself that he is a freeholder within the State of Ohio, and is worth the sum of fifty thousand dollars, over and above all his debts and liabilities, and exclusive of property exempt by law from execution.

ENOCH T. CARSEN.
RICH'D SMITH.

Sworn to before me this 31st day of August, 1875.

THO'S AMBROSE, *Clerk.*

SOUTHERN DISTRICT OF OHIO, *ss:*

E. C. Baldwin and J. H. Rhodes, being duly sworn, say each for himself that he is a freeholder within the State of Ohio, and is worth the sum of ten thousand dollars, over and above all his debts and liabilities and exclusive of property exempt by law from execution.

E. C. BALDWIN.
J. H. RHODES.

Sworn to before me this 31st day of August, 1875.

THO'S AMBROSE, *Clerk.*

222 SOUTHERN DISTRICT OF OHIO, *ss:*

On this 31st day of August, 1875, before me personally appeared Enoch T. Carson, Richard Smith, E. C. Baldwin, and J. H. Rhodes, to me known to be the persons described in and who executed the foregoing undertaking, and acknowledged that they executed the same.

THO'S AMBROSE,
Clerk U. S. Cir. C't, S. D. O.

Bond and sureties approved.
(Signed) PHILIP B. SWING,
U. S. Dist. Judge, S. D. Ohio.

223 UNITED STATES OF AMERICA,
Southern District of Ohio:

I, Thomas Ambrose, clerk of the circuit court of the United States for the southern district of Ohio, hereby certify the foregoing to be a true and correct transcript of the record and proceedings in the case of Henry W. Davenport, a minor, et al., vs. The Western Union Telegraph Co., as the same are on file in this court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 11th day of October, A. D. 1875, and in the 100th year of the Independence of the United States of America.

Attest:

[SEAL.]

THO'S AMBROSE,
Clerk Circuit Court U. S., S. D. Ohio.

(Indorsement on cover:) No. 316. The Western Union Telegraph Company, appellant, vs. Henry W. Davenport. S. Ohio C. C. U. S. Filed 23 November, 1875.

C